

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

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In re : Chapter 11  
Oldco M Corporation :  
(f/k/a Metaldyne Corporation), *et al.*, : Case No. 09-13412 (MG)  
Debtors. : (Jointly Administered)  
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**ORDER CONFIRMING SECOND AMENDED JOINT PLAN OF  
LIQUIDATION OF DEBTORS AND DEBTORS IN POSSESSION**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") having proposed the Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (in the form dated as of January 11, 2010 and included in the contents of the solicitation packages distributed to the creditors that were entitled to vote thereon, the "January 11 Plan," a true and correct copy of which (without exhibits) is attached hereto as Appendix I), as modified by the First Modifications to Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1363) (the "Modifications," true and correct copies of which are annexed hereto as Appendix II, and collectively with the January 11 Plan, as modified and including the exhibits thereto, the "Plan");<sup>1</sup> the Court having conducted an evidentiary hearing to consider confirmation of the Plan on February 23, 2010 (the "Hearing"); the Court having considered: (i) the testimony of the witnesses called at the Hearing, as well as the affidavits and declarations included among the exhibits admitted into evidence at the Hearing, including, among others, (A) the Declaration of Glen Larry Carroll in Support of Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession

<sup>1</sup> All capitalized terms used but not defined herein have the meanings given to them in the Plan.

(Docket No. 1358) (the "Carroll Declaration"), (B) the Declaration of Jeffrey L. Johnston in Support of Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1329) (the "Johnston Declaration"), (C) the Declaration of Kevin A. Martin Certifying the Tabulation of Votes on, and the Results of Voting with Respect to, the Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1327) (the "Martin Declaration"), and (D) the Declaration of Jan Van Dijk in Support of Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1341) (the "Van Dijk Declaration" and, collectively with the Carroll Declaration, the Johnston Declaration and the Martin Declaration, the "Declarations"); (ii) the arguments of counsel and all evidence proffered or adduced at the Hearing; (iii) the objection Filed with respect to Confirmation of the Plan having been withdrawn (Docket No. 1362); (iv) the resolution and settlement of all informal objections to Confirmation of the Plan; and (v) the pleadings Filed by the Debtors in support of the Plan, including: (A) the Statement of Debtors and Debtors in Possession Summarizing Resolutions of Potential Objections to Confirmation of Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1364) (the "Statement of Resolutions"); (B) the Debtors' Memorandum of Law in Support of Confirmation of Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1366) (the "Confirmation Memorandum"), including the summary of the Debtors' compliance with the standards of sections 1129(a) and 1129(b) of the Bankruptcy Code (inclusive of the standards of sections 1122, 1123 and 1124 of the Bankruptcy Code) attached as Exhibit 1 thereto (the "Confirmation Standards Exhibit"); (C) the Notice of Filing Proposed Form of Order Confirming Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1361); (D) the Affidavit of Service re: Solicitation filed by BMC Group,

Inc., dated January 20, 2010 (Docket No. 1241); (E) the Affidavit of Supplemental Service filed by BMC Group, Inc., dated January 19, 2010 (Docket No. 1233); and (F) the Notice of Proof of Publication of Notice of (A) Deadline for Casting Votes to Accept or Reject Joint Plan of Liquidation, (B) Hearing to Consider Confirmation of Joint Plan of Liquidation and (C) Related Matters (Docket No. 1272); and the Court being familiar with the Plan and other relevant factors affecting these Chapter 11 Cases pending under the Bankruptcy Code; the Court having taken judicial notice of the entire docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, and all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered or adduced at, the hearings held before the Court during the pendency of the Chapter 11 Cases; the Court having found that due and proper notice has been given with respect to the Hearing and the deadlines and procedures for Filing objections to the Plan and voting on the Plan; the appearance of all interested parties having been duly noted in the record of the Hearing; and upon the record of the Hearing, and after due deliberation thereon, and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND CONCLUDED, that:

**JURISDICTION AND VENUE**

- A. The Court has jurisdiction over this matter and these chapter 11 cases pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
- B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court has jurisdiction to enter a final order with respect thereto.
- C. The Debtors are proper debtors under section 109 of the Bankruptcy Code, and the Debtors are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code.
- D. Each of the conditions precedent to the entry of this Order has been satisfied or waived in accordance with Article VIII of the Plan.

## **MODIFICATIONS OF THE PLAN**

E. The Modifications do not materially or adversely affect or change the treatment of any Claim against or Interest in any Debtor, nor do they cause the Plan to fail to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. Pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019(a), the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims against the Debtors be afforded an opportunity to change previously cast acceptances or rejections of the Plan as Filed with the Court. The Filing of the Modifications and the disclosure of the Modifications on the record at the Hearing, constitute due and sufficient notice thereof under the circumstances of the Chapter 11 Cases. Accordingly, the Plan (which consists of the January 11 Plan as modified by the Modifications) is properly before the Court, and all votes cast with respect to the January 11 Plan prior to the Modifications shall be binding and shall apply with respect to the Plan.

## **STANDARDS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE**

F. The evidentiary record at the Hearing, the Declarations and the Confirmation Standards Exhibit support the findings of fact and conclusions of law set forth in the following paragraphs.

G. Section 1129(a)(1). The Plan complies with each applicable provision of the Bankruptcy Code. In particular, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code as follows:

1. In accordance with section 1122(a) of the Bankruptcy Code, Section II.B of the Plan classifies Claims and Interests into eight separate Classes reflecting the differing characteristics of those Claims and Interests

between Classes and the distinct legal rights of the holders of those Claims and Interests in the separate Classes (*see* Carroll Declaration ¶ 7);

2. Also in accordance with section 1122(a) of the Bankruptcy Code, Claims and Interests within a particular Class are substantially similar to the other Claims or Interests within the same Class. With respect to Customer Note Claims classified in Class 3 and General Unsecured Claims in Class 4, the Debtors have a legitimate reason for the separate classification of such Claims, and such classification is justified (*see* Carroll Declaration ¶¶ 8-9);
3. In accordance with section 1123(a)(1) of the Bankruptcy Code, Section II.B of the Plan properly classifies all Claims and Interests that require classification;
4. In accordance with section 1123(a)(2) of the Bankruptcy Code, Section II.B of the Plan properly identifies and describes that Class 1 and Class 2 are not impaired under the Plan;
5. In accordance with section 1123(a)(3) of the Bankruptcy Code, Section II.B of the Plan properly identifies and describes that Classes 3 through 8 are impaired under the Plan;
6. In accordance with section 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim or Interest of a particular Class;
7. In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation, including, without limitation, the consummation of the Dissolution Transactions contemplated by the Plan, the provisions regarding the establishment of the Distribution Trust and the appointment of the Distribution Trustee, the provisions providing for the transfer of certain assets to the Distribution Trustee and the retention and enforcement of certain claims by the Distribution Trustee (*see generally* Plan, Articles III, IV, and V; Carroll Declaration ¶¶ 11-12; Johnston Declaration ¶¶ 10-14);
8. Pursuant to Sections III.A and III.D of the Plan, the Debtors will be deemed to cease to exist as the Effective Date. Accordingly, section 1123(a)(6) of the Bankruptcy Code is not applicable in these cases;
9. Pursuant to Section III.D.2 of the Plan, the Debtors will cease to exist on the Effective Date and no individuals will serve as officers, directors or voting trustees of the Debtors after the Effective Date. Accordingly, section 1123(a)(7) of the Bankruptcy Code is inapplicable in these cases. Nevertheless, the initial members of the Oversight Committee were set forth on Exhibit III.C.3 to the Plan and, thus, were disclosed prior to the Hearing. The Distribution Trustee was selected by the Creditors'

Committee and disclosed in the Plan and the Disclosure Statement prior to the Hearing. No party has objected to the identity of the members of the Oversight Committee or the Distribution Trustee. In light of the foregoing, the manner of selection of the Oversight Committee and the Distribution Trustee is consistent with the interests of holders of Claims and Interests and public policy (*see* Carroll Declaration ¶ 17);

10. In accordance with section 1123(b)(1) of the Bankruptcy Code, Article II of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests;
11. In accordance with section 1123(b)(2) of the Bankruptcy Code, Article IV and other provisions of the Plan provide for the assumption and assignment or rejection of all of the remaining Executory Contracts or Unexpired Leases of the Debtors;
12. In accordance with section 1123(b)(3) of the Bankruptcy Code, Section III.G.2 of the Plan provides for the comprehensive settlement of claims and controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest or any distribution made pursuant to the Plan on account of any Allowed Claim or Allowed Interest in consideration for the distributions and other benefits provided under the Plan. Also in accordance with section 1123(b)(3) of the Bankruptcy Code, Section III.G.1 of the Plan provides for the retention and enforcement of certain claims by the Distribution Trustee;
13. In accordance with section 1123(b)(4) of the Bankruptcy Code, Sections III.C.1 and III.C.2 of the Plan provide for the transfer of all remaining assets in the Debtors' Estates to the Distribution Trust and provide for the creation of the Distribution Trust to effectuate the liquidation of all assets contributed to the Distribution Trust and the distribution of proceeds to creditors;
14. In accordance with section 1123(b)(5) of the Bankruptcy Code, Section II.B.2 of the Plan provides holders of Secured Claims with the rights afforded them under the Bankruptcy Code and provides for particular treatment of holders of unsecured Claims;
15. In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including, without limitation, the provisions of Article III (regarding the preservation of certain causes of action, the comprehensive settlement of claims and controversies, related releases and injunctions against certain actions and the cancellation and surrender of instruments, securities and other documentation), Article V (governing distributions on account of Allowed

Claims), Article VI (establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims from appropriate disputed claims reserves once resolved), Article VII (regarding the substantive consolidation of the Debtors) and Article IX (regarding the retention of jurisdiction by the Court over certain matters after the Effective Date) of the Plan;

16. In accordance with section 1123(d) of the Bankruptcy Code, Section IV.D.2 of the Plan provides for the payment of Allowed Cure Amount Claims associated with the assumption and assignment of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code; and
17. The Plan is dated and identifies the proponents in accordance with Bankruptcy Rule 3016(a).

H. Section 1129(a)(2). The Debtors have complied with all applicable

provisions of the Bankruptcy Code with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, the Plan complies with the requirements of sections 1125 and 1126 of the Bankruptcy Code as follows:

1. In compliance with the Order (I) Approving Second Amended Disclosure Statement with Modifications, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Joint Plan of Liquidation, (III) Scheduling Hearing on Confirmation of Joint Plan of Liquidation and (IV) Approving Related Notice Procedures, entered January 11, 2010 (Docket No. 1187) (the "Disclosure Statement Order"), on or before January 14, 2010, the Debtors, through their Claims and Noticing Agent, BMC Group, Inc. ("BMC Group"), caused electronic or paper copies of the following materials to be transmitted to all holders of Claims in Classes that were entitled to vote to accept or reject the Plan (i.e., Allowed Claims in Classes 3 and 4), which included both the Pension Benefit Guaranty Corporation and the Internal Revenue Service (who was also required to receive notice pursuant to Bankruptcy Rule 2002(j)):
  - the Disclosure Statement;
  - the January 11 Plan;
  - the Disclosure Statement Order;
  - the Debtors' letter to creditors of Oldco M Corporation describing the contents of the solicitation package;

- the Notice of (A) Deadline for Casting Votes to Accept or Reject Joint Plan of Liquidation, (B) Hearing to Consider Confirmation of Joint Plan of Liquidation and (C) Related Matters (the "Confirmation Hearing Notice"); and
- an appropriate form of Ballot (collectively with the materials described in the preceding bullets, the "Solicitation Package").

(See Affidavit of Service re: Solicitation filed by BMC Group, Inc., dated January 20, 2010 (Docket No. 1241) (the "BMC Service Affidavit"), at ¶ 2; see generally Martin Declaration ¶¶ 5-10.)

2. In compliance with the Disclosure Statement Order, on or before January 15, 2010, the Debtors, through BMC Group, caused copies of the Solicitation Package (not including Ballots) to be transmitted to: (a) parties listed on the Special Service List (as such term is defined in the Case Management Order); (b) the Office of the United States Trustee; (c) the Securities and Exchange Commission; and (d) the Pension Benefit Guaranty Corporation. (See Affidavit of Supplemental Service filed by BMC Group, Inc., dated January 19, 2010 (Docket No. 1233), at ¶ 2.)
3. In compliance with the Disclosure Statement Order, on or before January 14, 2010, the Debtors, through BMC Group, transmitted the Notice of Non-Voting Status Under Joint Plan of Liquidation of Debtors and Debtors in Possession to all holders of Claims and Interests that were not entitled to vote on the Plan (i.e., Classes 1-2 and 5-8). (See BMC Service Affidavit at ¶ 2.)
4. In compliance with the Disclosure Statement Order, on or before January 14, 2010, the Debtors, through BMC Group, transmitted the Confirmation Hearing Notice to: (a) holders of Administrative Claims that timely filed proofs of claim; (b) holders of Priority Tax Claims; (c) those parties who had requested notice by filing a notice of appearance in these Chapter 11 Cases; and (d) holders of Class 4 claims with pending objections to their Claims seeking the disallowance of such Claims. (See *id.*)
5. On January 22, 2010, the Debtors caused a copy of the Confirmation Hearing Notice to be published in *The Wall Street Journal* and *The Detroit News* and *Detroit Free Press*. (See Notice of Proof of Publication of Notice of (A) Deadline for Casting Votes to Accept or Reject Joint Plan of Liquidation, (B) Hearing to Consider Confirmation of Joint Plan of Liquidation and (C) Related Matters, dated January 29, 2010 (Docket No. 1272).)
6. On February 12, 2010, the Debtors Filed (and made available on BMC Group's website at <http://www.bmcgroup.com/metaldyne>) the following



Confirmation Exhibits: (a) Exhibit I.A.3 (Debtors in the Chapter 11 Cases); (b) Exhibit I.A.42 (Distribution Trust Agreement); (c) Exhibit III.C.3 (Identification of Oversight Committee Members); (d) Exhibit III.C.4 (Identification of Distribution Trustee); (e) Exhibit III.G.1 (Nonexclusive List of Retained Causes of Action); (f) Exhibit IV.A (Nonexclusive List of Executory Contracts and Unexpired Leases to Be Rejected); (g) Exhibit IV.D.1 (Prepetition Executory Contracts and Unexpired Leases to be Assumed and Assigned to the Distribution Trust); and (h) Exhibit IV.D.2 (Postpetition Contracts and Leases to be Assigned to the Distribution Trust). (See Notice of Filing Certain Exhibits to Second Amended Joint Plan of Liquidation (Docket No. 1322).)

7. The Confirmation Hearing Notice provided due and proper notice of the Hearing and all relevant dates, deadlines, procedures and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the Voting Deadline, the Objection Deadline (as such term is defined in the Confirmation Hearing Notice), the time, date and place of the Hearing and the release provisions in the Plan. (See generally Confirmation Hearing Notice.)
8. Based on sections H.1 through H.7 above, all persons entitled to receive notice of the Disclosure Statement, the Plan and the Hearing have received proper, timely and adequate notice in accordance with the Disclosure Statement Order, applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto, and the Debtors are, thus, in compliance with section 1128 of the Bankruptcy Code and Bankruptcy Rules 2002(b) and 3017(d) – (f). (See generally Martin Declaration ¶¶ 5-10; Carroll Declaration ¶ 10.) No other or further notice is required.
9. Based upon sections H.1 through H.8 above, the Debtors solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. Accordingly, the Debtors are entitled to the securities law protections afforded by section 1125(e) of the Bankruptcy Code (as such protections may relate to any rights that creditors are receiving in the Distribution Trust) and the exculpation provisions set forth in section III.G.4 of the Plan.
10. Claims in Classes 1 and 2 are unimpaired, and such Classes, and the holders of Claims in such Classes, are conclusively presumed to have accepted the Plan, pursuant to section 1126(f) of the Bankruptcy Code. (See Plan, Sections II.B.1 and II.B.2.)
11. With respect to Customer Note Claims classified in Class 3, even though holders of such Claims were entitled to vote on the Plan, none did so. (See

Martin Declaration ¶ 11.) Accordingly, Class 3 is deemed to have accepted the Plan.

12. The Plan was voted on by one of the classes of impaired Claims that were entitled to vote pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order (i.e., Class 4). (*See id.*, ¶¶ 11-13.)
13. Based upon the procedures approved in the Disclosure Statement Order, BMC Group has made a determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting Claims in Class 4 under the Plan. (*See id.*, ¶¶ 11-13.)
14. Class 4 has accepted the Plan by at least two-thirds in amount and a majority in number of the Claims in such Class actually voting. (*See id.*, ¶¶ 11-13.) Accordingly, the Court finds that Class 4 has accepted the Plan for purposes of section 1126(c) of the Bankruptcy Code.
15. Exhibit A to the Martin Declaration sets forth the tabulation of votes and demonstrates that such tabulation was conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. (*See id.*, ¶ 14.)
16. Holders of Claims and Interests in Classes 5 through 8 are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.
  - I. Section 1129(a)(3). The Plan has been proposed by the Debtors in good

faith and in the belief that the proposed liquidation will maximize value for the Debtors' creditors. The Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code. In so finding, the Court has considered the totality of the circumstances in these Chapter 11 Cases. The Plan is the result of extensive good faith, arms'-length negotiations between the Debtors and certain of their principal constituencies and reflects substantial input from the principal constituencies having an interest in the Chapter 11 Cases. The Plan has been proposed with the legitimate and honest purpose of liquidating the assets of each of the Debtors and maximizing the returns available to creditors of the Debtors. (*See* Carroll Declaration ¶ 13.) In addition, the settlements embodied in the Plan, resolution of potential objections and

withdrawal of actual objections to the Plan that were achieved and the support of the Debtors' primary constituencies reflect the overall fairness of the Plan and that the Plan has been proposed in good faith and for proper purposes. (*See* Carroll Declaration ¶ 13.) Moreover, the strong support for the Plan by Claim holders in Class 4 shows that the Plan was proposed in good faith. Further, as described in greater detail below, the Plan's indemnification, exculpation, release and injunction provisions are appropriate here, (*see* Carroll Declaration ¶ 22), have been negotiated in good faith and are consistent with sections 105, 1123(b)(6), and 1129 of the Bankruptcy Code and applicable law in this Circuit.

J. Section 1129(a)(4). No payment for services or costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be made by a Debtor other than payments that have been authorized by an order of the Court. Pursuant to Sections II.A.1 and IV.D of the Plan, the payment of Allowed Administrative Claims, Allowed Priority Tax Claims and Cure Amount Claims are subject to Court approval and the standards of the Bankruptcy Code, including through the claims process. In addition, the Court has previously authorized the interim payment of the fees and expenses incurred by Professionals in connection with the Chapter 11 Cases. (*See* Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a) and Local Bankruptcy Rule 2016-1, Establishing Procedures for Interim Monthly Compensation for Professionals (Docket No. 287); and Order Granting Applications of Professionals for Allowance of First Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (Docket No. 1139).) Finally, pursuant to Sections IX.1 and IX.2, the Court will retain jurisdiction after the Effective Date to hear and

determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. (*See* Carroll Declaration ¶¶ 15-16.)

K. Section 1129(a)(5). Pursuant to Sections III.A and III.D, each of the Debtors shall cease to exist as of the Effective Date, and therefore the Debtors will not have going-forward management. Accordingly, section 1129(a)(5) of the Bankruptcy Code is inapplicable in these cases. Nevertheless, the Plan discloses the identity of the Oversight Committee members and the Distribution Trustee, and no objection to the appointment of the members of the Oversight Committee or the Distribution Trustee was received. In addition, the selection of the members of the Oversight Committee and the appointment of the Distribution Trustee are consistent with the interests of creditors inasmuch as the Oversight Committee and the Distribution Trustee were chosen by the Creditors' Committee. (*See* Plan, Sections III.C.3 and III.C.4, Exhibits III.C.3 and III.C.4; Carroll Declaration ¶ 17.)

L. Section 1129(a)(6). The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency; accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable in the Chapter 11 Cases. (*See* Carroll Declaration ¶ 17.)

M. Section 1129(a)(7). Each holder of an impaired Claim or Interest that has not accepted the Plan will, on account of such Claim or Interest, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. (*See* Johnston Declaration ¶¶ 15-17.) The Debtors have demonstrated that the Plan is in the best interests of their creditors. (*See* Johnston Declaration ¶ 17.)

N. Section 1129(a)(8). Four of the eight Classes have either voted to accept the Plan, are deemed to have voted to accept the Plan or are unimpaired under the Plan. (*See*

Plan, Section II.B; Martin Declaration ¶ 11.) The holders of Claims and Interests in Classes 5 through 8 shall neither receive nor retain any property under the Plan and, therefore, are deemed to have rejected the Plan. (*See* Plan, Section II.B.) Nevertheless, the Plan is confirmable because it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such non-accepting Classes of Claims and Interests. (*See* Johnston Declaration ¶ 14; *infra* paragraph U.)

O. Section 1129(a)(9). The Plan provides treatment for Allowed Administrative Claims, Allowed Priority Claims and Allowed Priority Tax Claims that is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code. *See* Plan, Section II.A.

P. Section 1129(a)(10). The Plan has been accepted by at least one class of impaired Claims entitled to vote on the Plan (Class 4), determined without including any acceptance of the Plan by any insider. (*See* Martin Declaration ¶¶ 11-13.)

Q. Section 1129(a)(11). The Plan is feasible and complies with section 1129(a)(11) of the Bankruptcy Code. The Debtors' projections show that the Debtors expect to have sufficient funds to make the payments required under the Plan. (*See* Johnston Declaration ¶¶ 10-14 and Schedule A thereto.)

R. Section 1129(a)(12). The Plan provides that all fees payable pursuant to 28 U.S.C. § 1930 that are due prior to the Effective Date will be paid in full in by the Debtors in Cash on the Effective Date. Fees payable under 28 U.S.C. § 1930 that are due after the Effective Date are to be timely paid by the Distribution Trustee pursuant to the Plan. (*See* Plan, Section II.A.1.b; Carroll Declaration ¶ 19.)

S. Section 1129(a)(13). The obligation of the Debtors to make payments of all retiree benefits (as that term is defined under section 1114 of the Bankruptcy Code) have been resolved in accordance with agreements and orders of the Court entered before the date of the Hearing. (See Docket Nos. 1223, 1248, 1249, 1344, 1350, 1351.)

T. Sections 1129(a)(14), (15) and (16). Sections 1129(a)(14), 1129(a)(15) and 1129(a)(16) of the Bankruptcy Code apply to individuals or nonprofit entities and are not applicable here.

U. Section 1129(b). The Plan does not "discriminate unfairly" because the Claims and Interests in Classes 5 through 8 are legally distinct from other Claims and Interests and are properly classified in separate Classes. (See Carroll Declaration ¶ 20.) The Plan is otherwise "fair and equitable" under section 1129(b) of the Bankruptcy Code because (a) for each class of unsecured Claims (Classes 3 through 6), no holder of a Claim that is junior to the Claims in such class is receiving or retaining any property under the Plan and (b) for each class of Interests (Classes 7 and 8), no holder of Interests that are junior to the Interests in such class is receiving or retaining any property under the Plan. (See Johnston Declaration ¶¶ 13-14.)

V. Section 1129(c). The Plan is the only plan that has been Filed in the Chapter 11 Cases, and it is the only plan that has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

W. Section 1129(d). No party in interest, including but not limited to any governmental unit, has requested that the Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance. (See

Carroll Declaration ¶ 21.) Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

### **DISSOLUTION TRANSACTIONS AND CREATION OF DISTRIBUTION TRUST**

X. The Dissolution Transactions and the creation of the Distribution Trust described in Article III of the Plan have been proposed in good faith. The Dissolution Transactions and the creation of the Distribution Trust promote the maximization of the value of the ultimate recoveries to all creditor groups on a fair and equitable basis in accordance with the priorities established by the Bankruptcy Code. The Dissolution Transactions have not been entered into fraudulently, nor with the intent to hinder, delay or defraud any entity to which the Debtors are indebted on the Effective Date. The Distribution Trust will be established pursuant to the Distribution Trust Agreement substantially in the form set forth in Exhibit I.A.42 of the Plan. Pursuant to Article III of the Plan, all assets of value remaining in the Debtors' estates will be transferred to the Distribution Trust. The primary purpose of the Distribution Trust is liquidating the assets transferred to it by the Debtors, with no objective to continue or engage in the conduct of a trade or business except to the extent consistent with the trust's liquidating purpose and reasonably necessary to conserve and protect such assets and provide for the orderly liquidation thereof. (See Carroll Declaration ¶ 12.)

### **EXECUTORY CONTRACTS**

Y. Pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, upon the occurrence of the Effective Date, Article IV of the Plan provides for either the assumption and assignment or the rejection of all of the Executory Contracts and Unexpired Leases of the Debtors. The Debtors' determinations regarding the assumption and assignment or rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, will aid in the implementation of the Plan and are in the best interests of the

Debtors, their estates, holders of Claims and other parties in interest in the Chapter 11 Cases. (See Carroll Declaration ¶ 23.) The Debtors have Filed Exhibits IV.A, IV.D.1 and IV.D.2 to the Plan (as they may have been amended or supplemented) identifying those Executory Contracts and Unexpired Leases to be assumed and assigned or rejected. Parties wishing to object to such assumption and assignment, the proposed Cure Amount Claim, or to assert Claims arising out of the rejection of an Executory Contract or Unexpired Lease may do so in accordance with the procedures set forth in Article IV of the Plan.

### **SETTLEMENTS AND RELEASES**

Z. The Court finds that, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits under the Plan being provided by Released Parties (including pursuant to the cooperation provisions set forth on Appendix IV of the Plan), the provisions of the Plan, including the releases and other provisions set forth in Sections III.G.3 and III.G.4 of the Plan, constitute a consensual good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim or Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim or Interest.

### **SUBSTANTIVE CONSOLIDATION OF THE DEBTORS**

AA. There are no objections to the substantive consolidation of the Debtors pursuant to Article VII of the Plan. In light of the absence of any creditor objection to the substantive consolidation of the Debtors, the substantive consolidation of the Debtors is consensual. The substantive consolidation provided for in the Plan is in the best interests of the Debtors' Estates and creditors as the cost of disentangling the affairs of the Debtors' Estates would be substantial, would deplete the Debtors' assets significantly and would, thus, harm the



Debtors' creditors. (*See generally* Van Dijk Declaration ¶¶ 4, 18; Johnston Declaration ¶¶ 19-25; Carroll Declaration ¶¶ 24-25.)

### **OTHER FINDINGS**

BB. In order to permit the Distribution Trustee to commence its duties as quickly as practicable and in light of the lack of objections to the Plan by all but one creditor, good cause exists to support the waiver of the stay imposed by Bankruptcy Rule 3020(e).

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

#### **A. Confirmation of Plan**

1. The Plan and each of its provisions (whether or not specifically approved herein) are CONFIRMED in each and every respect, pursuant to section 1129 of the Bankruptcy Code; *provided, however*, that if there is any direct conflict between the terms of the Plan and the terms of this Order, the terms of this Order shall control.

2. The Effective Date of the Plan shall occur on the date determined by the Debtors when the conditions set forth in Section VIII.B of the Plan have been satisfied or, if applicable, have been waived in accordance with Section VIII.C of the Plan.

3. Any objections or responses to Confirmation of the Plan and the reservation of rights contained therein that (a) have not been withdrawn, waived or settled by additions to this Order or through the Modifications or (b) are not cured by the relief granted herein are hereby OVERRULED in their entirety and on their merits, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice.

#### **B. Approval of Settlements**

4. Pursuant to Bankruptcy Rule 9019, the settlement of all claims and controversies relating to the rights that a holder of a Claim or Interest may have with respect to

any Allowed Claim or Allowed Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim or Allowed Interest as set forth in the Plan is approved in all respects.

**C. Approval of Releases and Related Injunctions**

5. The releases and injunctions set forth in Section III.G.3 of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court, any of the parties to such releases or any other party.

6. Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, the Debtors, on behalf of themselves and their affiliates, the Estates and their respective successors, assigns and any and all entities who may purport to claim by, through, for or because of them, shall forever release, waive and discharge all Liabilities (including Derivative Claims) that they have, had or may have against any Released Party, the 2012 Indenture Trustee and its Representatives (in their capacities as such) and the 2013 Indenture Trustee and its Representatives (in their capacities as such), except with respect to obligations arising under the Plan; *provided, however*, that the foregoing provisions shall not affect the liability of any Person that otherwise would result from any act or omission to the extent that act or omission is determined in a Final Order to have constituted intentional misconduct.

7. Without limiting any other applicable provisions of, or releases contained in, the Plan, as of the Effective Date, in consideration for the consideration provided under the Plan, each holder of a Claim or Interest that voted in favor of the Plan, to the fullest extent permissible under law, will be deemed to forever release, waive and discharge all Liabilities in any way relating to a Debtor, the Chapter 11 Cases, the Estates, the Plan, the exhibits to the Plan

or the Disclosure Statement that such entity has, had or may have against any Released Party; *provided, however*, that the foregoing provisions shall not affect the liability of any Person that otherwise would result from any act or omission to the extent that the act or omission is determined in a Final Order to have constituted intentional misconduct.

8. From and after the Effective Date, the Released Parties and the 2012 Indenture Trustee and its Representatives (in their capacities as such) and the 2013 Indenture Trustee and its Representatives (in their capacities as such) shall neither have nor incur any liability to any Person for any act taken or omitted, or to be taken, in connection with the sale of the majority of the Debtors' assets to MD Investors or the Debtors' other postpetition liquidation activity, including the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, the exhibits to the Plan, the Disclosure Statement, the Distribution Trust Agreement or any other contract, instrument, release or other agreement or document provided in connection therewith; *provided, however*, that the foregoing provisions shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent that the act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

9. As of the Effective Date, except as provided in the Plan or this Order, all Persons shall be permanently enjoined from commencing or prosecuting, whether directly, derivatively or otherwise, any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, liabilities, rights of contribution or rights of indemnification released pursuant to the Plan, including pursuant to the releases in Section III.G.3 of the Plan.

10. Notwithstanding anything in the Plan to the contrary, each of the directors, officers, employees, agents of the Debtors and the Debtors' current non-debtor subsidiaries, and

each of its (and their) heirs, agents, executors, administrators, attorneys, successors and assigns (collectively, the "Individual PBGC Releasees"), shall not be released from any claims, causes of action or liabilities for breach of fiduciary duty arising under Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which may be brought by the Pension Benefit Guaranty Corporation ("PBGC") on behalf of the Metaldyne Corporation Pension Plan (the "Pension Plan") (the "Preserved Claims"). Nothing herein shall be construed as or constitute an admission (a) that any Individual PBGC Releasee is a fiduciary with respect to the Pension Plan, or (b) of liability for the Preserved Claims or otherwise by any Individual PBGC Releasee.

**D. Order Binding on All Parties**

11. Subject to the conditions precedent to the Effective Date set forth in Section VIII.B of the Plan, in accordance with section 1141(a) of the Bankruptcy Code and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Plan and this Order shall be binding upon, and inure to the benefit of: (a) the Debtors; (b) the Distribution Trust; (c) any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan); (d) any and all non-Debtor parties to Executory Contracts or Unexpired Leases with any of the Debtors; (e) any party that had requested notice of the Plan and the Hearing; and (f) the respective heirs, executors, administrators, successors or assigns, if any, of any of the foregoing. All settlements, compromises, releases, waivers, exculpations and injunctions set forth in the Plan shall be, and hereby are, effective and binding on all Persons who may have had standing to assert any settled, released, exculpated or enjoined causes of action, and no other Person or entity shall possess such standing to assert such causes of action after the Effective Date.

**E. Substantive Consolidation of the Debtors' Estates**

12. As no objections to substantive consolidation have been Filed or served by any party pursuant to Section VII.B of the Plan, the substantive consolidation of the Debtors is hereby approved. As of the Effective Date: (a) all assets and liabilities of the Debtors shall be deemed merged; (b) all guarantees by one Debtor of the obligations of any other Debtor shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors; (c) each and every Claim Filed or to be Filed in the Chapter 11 Case of any Debtor shall be deemed Filed against the estate of the consolidated Debtors and shall be deemed to be one Claim against, and a single obligation of, the consolidated Debtors, and the Debtors may file and the Court will sustain objections to Claims for the same liability that are Filed against multiple Debtors; and (d) Intercompany Claims between Debtors shall be eliminated and extinguished.

13. Such consolidation shall not affect: (a) the legal and corporate structures of the Debtors, subject to the right of the Debtors to complete the Dissolution Transactions; (b) the vesting of assets in the Distribution Trust; (c) the right to distributions from any insurance policies or proceeds of such policies; or (d) the rights of the Debtors or the Distribution Trustee to contest alleged setoff or recoupment efforts by creditors on the grounds of lack of mutuality under section 553 of the Bankruptcy Code and otherwise applicable law.

**F. Vesting and Transfer of Assets; Release of Liens**

14. On the Effective Date, except as otherwise provided in the Plan, all assets remaining in the Estates (other than rights under any Executory Contract or Unexpired Lease that is being rejected pursuant to the Plan) shall be transferred to the Distribution Trust, including the Debtors' equity or ownership interest in the Foreign Asset Subsidiaries and the Foreign No-Asset

Subsidiaries (to the extent not dissolved as of the Effective Date), and all such assets shall vest in the Distribution Trust; provided, however, that, for purposes of clarification, none of the equity interests in the Debtors will be transferred to the Distribution Trust. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens against the property of any Estate will be fully released, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall attach to and be enforceable solely against the same assets that are owned by the Distribution Trust in which the holder of such Claim had a Lien, including any net proceeds of sales of such assets. All such Liens against the assets of the Distribution Trust shall be fully released upon the holder of the Liens receiving its full distribution under the Plan.

**G. Exemption From Taxation**

15. Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax or similar Tax: (a) any transfer made by the Debtors to the Distribution Trust; (b) any sales made by the Distribution Trust to liquidate such assets in the trust and convert such assets into Cash; (c) any sales of assets made by the Debtors under section 363 of the Bankruptcy Code, to the extent that title to the assets being sold transfers after the Confirmation Date; (d) the making or assignment of any lease or sublease; (e) any Dissolution Transaction (including any mergers undertaken in conjunction therewith); or (f) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

16. All filing and recording officers are hereby directed to accept for filing or recording all instruments of transfer to be filed and recorded in accordance with the Plan or the Confirmation Exhibits without payment of any such Taxes. Notice of entry of this Order (a) shall have the effect of an order of the Court, (b) shall constitute sufficient notice of the entry of this Order to such filing and recording officers and (c) shall be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law. This Court retains jurisdiction to enforce the foregoing direction by contempt proceedings or otherwise.

#### **H. Executory Contracts and Unexpired Leases**

17. The Executory Contract and Unexpired Lease provisions of Article IV of the Plan are specifically approved in all respects, are incorporated herein in their entirety and are so ordered. The Debtors are authorized to assume and assign and/or reject Executory Contracts or Unexpired Leases in accordance with Article IV of the Plan.

18. This Order shall constitute an order of the Court approving the assumptions and assignments or rejections described in Article IV of the Plan, pursuant to section 365 of the Bankruptcy Code as of the Effective Date. If an objection to a proposed assumption and assignment or Cure Amount Claim is not resolved in favor of the Debtors or the Distribution Trustee, the Debtors or the Distribution Trustee may, within their sole discretion, choose to reject such Executory Contract or Unexpired Lease within seven days of the entry of a Final Order with respect to such matter. Such rejection shall be deemed effective as of the Effective Date.

19. Except as otherwise provided in the Plan, in any contract, instrument, release or other agreement or document entered into in connection with the Plan or in a Final Order of the Court, or with respect to the rejection of a specific Executory Contract or Unexpired Lease to which a party has objected by the appropriate deadline, on the Effective Date, pursuant

to section 365 of the Bankruptcy Code, the Debtors shall be deemed to reject each Executory Contract and Unexpired Lease not previously assumed and assigned or rejected during the Chapter 11 Cases, which includes, but is not limited to, the Executory Contracts and Unexpired Leases Identified on Exhibit IV.A to the Plan.

20. The Unexpired Lease associated with the Debtors' lease of real property for their Niles, Illinois facility shall be treated in accordance with the Dyne Agreement and, to the extent that the provisions of Section IV.A of the Plan conflict with the terms of the Dyne Agreement, the terms of the Dyne Agreement shall apply.

21. The Unexpired Lease associated with the Debtors' lease of real property for their Middleville, Michigan Facility shall be treated in accordance with the Spirit Agreement, and, to the extent that the provisions of Section IV.A of the Plan conflict with the terms of the Spirit Agreement, the terms of the Spirit Agreement shall apply.

22. Contracts and leases entered into after the Petition Date by a Debtor, including any Executory Contracts and Unexpired Leases assumed by a Debtor, that have not been assigned to MD Investors or the Distribution Trustee as of the Effective Date will be considered repudiated by the Debtors, and the counterparties to such contracts, if they believe that such repudiation constitutes a breach of such postpetition agreement, must file a claim or Administrative Claim in accordance with the Plan or have their rights forever waived and released.

23. Rejection or repudiation of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such Executory Contracts or Unexpired Lease. Notwithstanding any applicable nonbankruptcy law to the contrary, the Debtors and the Distribution Trustee expressly



reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance obligations on goods previously purchased by the contracting Debtors from counterparties to rejected or repudiated Executory Contracts or Unexpired Leases, and any such rights shall vest in the Distribution Trust as of the Effective Date.

**I. Plan Distributions**

24. On and after the Effective Date, distributions on account of Allowed Claims and the resolution and treatment of Disputed Claims shall be effectuated pursuant to Article V of the Plan.

**J. Recovery Actions**

25. Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Distribution Trustee will retain and may enforce any claims, demands, rights and causes of action that any Estate may hold against any Person, including the Recovery Actions, to the extent not released under Section III.G.3 of the Plan or otherwise. The Distribution Trustee may pursue such retained claims, demands, rights or causes of action, as appropriate, in accordance with the best interests of the beneficiaries of the Distribution Trust. Any recovery of Cash by the Distribution Trustee on account of Recovery Actions will be deposited in the Recovery Action Trust Account. In accordance with and subject to any applicable law, the Debtors' inclusion or failure to include any specific right of action or claim on the nonexclusive schedule of currently pending actions and claims brought by one or more Debtors attached as Exhibit III.G.1 to the Plan shall not be deemed an admission, denial or waiver of any claims, demands, rights or causes of action that any Debtor or Estate may hold

against any entity. All such claims, demands, rights or causes of action shall be preserved as Recovery Actions (except to the extent any such claim is specifically released by the Plan).

**K. Claims Bar Dates and Other Claims Matters**

26. General Administrative Claim Bar Date Provisions. Unless previously Filed or as otherwise governed by the Bar Date Order or in another order of the Court, requests for payment of Administrative Claims must be Filed with the Court and served on the parties identified in Section X.F of the Plan no later than 30 days after the Effective Date. Holders of Administrative Claims entitled to priority under section 503(b)(9) of the Bankruptcy Code that have asserted such Claims as part of a proof of Claim filed in accordance with the Bar Date Order shall not be required to, and should not, File additional requests for payment of Administrative Claims with the Court to maintain their assertion of such administrative priority Claims, and the General Bar Date shall continue to apply to such Claims. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable bar date will be forever barred from asserting such Administrative Claims against the Debtors, the Distribution Trust or their respective property. Objections to the requests for payment of postpetition Administrative Claims must be Filed and served on the parties identified in Section X.F of the Plan and the requesting party within 120 days after the Effective Date. Nothing in Section II.A.1.c of the Plan shall waive, extend or lengthen the General Bar Date for the holder of any prepetition claim, even if such prepetition Claim is an Administrative Claim.

27. Professional Compensation. Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the parties identified in Section X.F of the Plan and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Court an

application for final allowance of such Fee Claim no later than 60 days after the Effective Date; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Court review or approval (except as provided in the Ordinary Course Professionals Order); provided, further, however, that no Ordinary Course Professional may perform services for the Distribution Trust after the Effective Date, or be compensated for such services, without the consent of the Distribution Trustee. Objections to any Fee Claim must be Filed and served on the parties identified in Section X.F of the Plan and the requesting party by 90 days after the Effective Date or such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claims.

28. Bar Date for Ordinary Course Administrative Liabilities. Holders of Administrative Claims arising from Liabilities incurred by a Debtor in the ordinary course of its business on or after the Petition Date but prior to the Effective Date must, if such Claims are not paid within 20 days of the Effective Date, be Filed with the Court no later than 30 days after the Effective Date or such holders shall be forever barred from asserting such Claims against the Estates.

29. Bar Date for Rejection Claims. In accordance with the Bar Date Order, and except as otherwise provided in a Final Order of the Court approving the rejection of an Executory Contract or Unexpired Lease, Claims arising out of the rejection of an Executory Contract or Unexpired Lease must be Filed with the Court on or before the later of: (a) 30 days after the Effective Date or (b) 30 days after such Executory Contract or Unexpired Lease is

rejected pursuant to an order of the Court. Any Claims not Filed within such applicable time periods will be forever barred from receiving a distribution from the Debtors or the Distribution Trust.

30. 28 U.S.C. § 1930 Fees. Pursuant to Section II.A.1.b of the Plan, on or before the Effective Date, fees payable pursuant to 28 U.S.C. § 1930 shall be paid by the Debtors in Cash equal to the amount of such fees. Fees payable pursuant to 28 U.S.C. § 1930 for each Debtor's Estate after the Effective Date will be paid from the Distribution Trust by the Distribution Trustee as General Distribution Trust Expenses in accordance therewith until the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. Such post-Effective Date fees shall be calculated as follows: (a) for the quarter in which the Effective Date occurs, the Distribution Trustee shall file separate quarterly reports for each of the Debtors' Estates, and the fees shall be calculated separately for each of the Debtors' Estates based on such reports; and (b) for each subsequent quarter, the Distribution Trustee shall file a single consolidated quarterly report for the Debtors' substantively consolidated Estates, including distributions made by the Distribution Trust, and a single fee shall be calculated based on such consolidated report.

#### **L. Plan Implementation**

31. In accordance with section 1142 of the Bankruptcy Code, section 303 of the Delaware General Corporation Law, sections 450.1861 and 450.1862 of the Michigan Business Corporation Act, section 808 of the New York Business Corporation Law and section 1903(b) of the Pennsylvania Business Corporation Law and any comparable provisions of the business corporation law of any other state (collectively, the State Statutes"), without further action by the Court or the stockholders, members, managers or directors of any Debtor, the Debtors, the Distribution Trust, the Distribution Trustee, and the Chief Liquidating Officer of the

appropriate Debtor (collectively, the "Responsible Officers"), are authorized to: (a) take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Order or the transactions contemplated thereby or hereby, including, without limitation, the Dissolution Transactions and the other transactions identified in Article III of the Plan; and (b) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases, agreements and documents necessary to implement, effectuate and consummate the Plan, including without limitation, those contracts, instruments, releases, agreements and documents identified in Article III of the Plan (including the Distribution Trust Agreement).

32. To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders, members or directors of any of the Debtors, this Order shall, pursuant to section 1142 of the Bankruptcy Code and the State Statutes, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors, stockholders and members of the appropriate Debtor.

33. Each federal, state, commonwealth, local, foreign or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Order.

34. Corporate Existence. Pursuant to Section III.A of the Plan and consistent with Section III.B of the Plan, each of the Debtors shall be subject to a Dissolution Transaction on or before the Effective Date, or as promptly thereafter as possible, and each Debtor shall be deemed to cease to exist as of the Effective Date after the transfer of property of their Estates to the Distribution Trust.

35. Actions in Furtherance of the Plan. On or after the entry of the Confirmation Order, the Debtors shall enter into such Dissolution Transactions and shall take such actions as may be necessary or appropriate to merge, dissolve or otherwise terminate the corporate existence of the Debtors as of the Effective Date or as promptly as possible thereafter. The actions to effect the Dissolution Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law, as well as other terms to which these entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms as these entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, continuance or dissolution or similar instruments with the applicable governmental authorities; and (d) the taking of all other actions that these entities determine to be necessary or appropriate, including making other filings or recordings that may be required by applicable law in connection with the Dissolution Transactions. Nothing herein shall impact the limitations on setoff set forth in Sections II.B and VII.A of the Plan.

36. Distribution Trust Agreement. The Distribution Trust Agreement, in the form filed with the Court on February 12, 2010, is hereby approved in its entirety, and the Debtors are authorized to enter into the Distribution Trust Agreement in the form filed or in a form substantially similar thereto. The Distribution Trust Agreement shall be binding upon all holders of Allowed Claims, Allowed Interests and all current or future holders of beneficial interests pursuant to the Distribution Trust.

37. Distribution Trustee. Executive Sounding Board Associates, Inc. is hereby appointed to serve as the Distribution Trustee on the terms set forth in this Order, the Plan and the Distribution Trust Agreement.

38. Oversight Committee. An Oversight Committee shall be established to review and monitor the actions of the Distribution Trustee in its administration of the Distribution Trust. The Oversight Committee shall have standing to be heard in the Court on all matters brought before the Court in the Chapter 11 Cases after the Effective Date. The initial members of the Oversight Committee are identified on Exhibit III.C.3 to the Plan. In the event that a member of the Oversight Committee resigns, such member may be replaced by a party that previously served on the Creditors' Committee without order of the Court. If all members of the Oversight Committee resign and no replacements are named, any duties of the Oversight Committee shall be performed by the Distribution Trustee. The Oversight Committee shall not be entitled to reimbursement from the Debtors or the Distribution Trust for any fees incurred in conducting its duties, but shall be entitled to certain reasonable expense reimbursements as provided under the Plan.

39. Creation of Distribution Trust. On or prior to the Effective Date, the Distribution Trust shall be established pursuant to the Distribution Trust Agreement for the purpose of liquidating the assets contributed to the Distribution Trust, resolving all Disputed Claims, pursuing any Recovery Actions, making all distributions to holders of Allowed Claims in accordance with the terms of the Plan and otherwise implementing the Plan and administering the Debtors' Estates. Subject to and to the extent set forth in the Plan, the Confirmation Order, the Distribution Trust Agreement or other agreement (or any other order of the Court entered pursuant to or in furtherance hereof), the Distribution Trust (and the Distribution Trustee) shall

be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan; (b) establish, maintain and administer the Trust Accounts, which shall be segregated to the extent appropriate in accordance with the Plan; (c) accept, preserve, receive, collect, manage, invest, supervise, prosecute, settle and protect the assets of the Distribution Trust (directly or through its professionals or a Third Party Disbursing Agent), in accordance with the Plan; (d) sell, liquidate, transfer, distribute or otherwise dispose of the assets of the Distribution Trust (directly or through its professionals or a Third Party Disbursing Agent) or any part thereof or any interest therein upon such terms as the Distribution Trustee determines to be necessary, appropriate or desirable; (e) dissolve, wind down or liquidate any non-Debtor entity in which the Debtors have an equity interest, including, if determined to be appropriate in the judgment of the Distribution Trustee, authorizing the commencement of insolvency proceedings for any such non-Debtor entity in an appropriate forum; (f) calculate and make distributions to holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan; (g) comply with the Plan and exercise the Distribution Trustee's rights and fulfill its obligations thereunder; (h) review, reconcile, settle or object to Claims and resolve such objections as set forth in the Plan; (i) pursue Recovery Actions that are transferred to the Distribution Trust to the extent that their pursuit would likely result in a material economic benefit to creditors classified in Class 3 and Class 4 hereunder, as determined by the Oversight Committee, in its sole discretion; (j) retain, compensate and employ professionals to represent the Distribution Trustee with respect to its responsibilities; (k) timely file appropriate Tax returns or requests for extension, including information returns (*e.g.*, IRS Forms W-2 and 1099, as appropriate), and other reports on behalf of the Distribution Trust and the Debtors and timely pay from the applicable Trust Accounts any Taxes or other obligations



owed by the Distribution Trust and the Debtors (other than amounts owed by the Debtors that are prepetition unsecured nonpriority Claims); (l) exercise such other powers as may be vested in the Distribution Trustee under the Distribution Trust Agreement or this Plan, or as deemed by the Distribution Trustee to be necessary and proper to implement the provisions of the Plan and the Distribution Trust Agreement; (m) take such actions as are necessary or appropriate to close or dismiss any or all of the Chapter 11 Cases; and (n) dissolve the Distribution Trust in accordance with the terms of the Distribution Trust Agreement. Notwithstanding anything to the contrary in Section III.C.1 of the Plan, the Distribution Trust's primary purpose shall be liquidating the assets transferred to it by the Debtors, with no objective to continue or engage in the conduct of a trade or business except to the extent consistent with the trust's liquidating purpose and reasonably necessary to conserve and protect such assets and provide for the orderly liquidation thereof.

40. Funding of and Transfer of Assets Into the Distribution Trust. Except as otherwise provided in the Plan or this Order, on the Effective Date, other than rights under any Executory Contract or Unexpired Lease that is being rejected pursuant to the Plan, the Debtors will transfer all assets remaining in their Estates to the Distribution Trust, including their equity or ownership interest in the Foreign Asset Subsidiaries and equity or ownership interest in the Foreign No-Asset Subsidiaries to the extent not dissolved prior to the Effective Date, and all such assets shall vest in the Distribution Trust, to be administered by the Distribution Trustee in accordance with the Plan and the Distribution Trust Agreement. Any Cash that is transferred by the Debtors to the Distribution Trust, and thus constitutes the Initial Other Asset Funding Amount, shall be transferred into the Other Asset Trust Account. On the Effective Date, MD Investors shall cause the Initial MD Investors Funding Amount to be released from escrow and

transferred to the Distribution Trustee for placement into the Recovery Action Trust Account or shall pay such amount directly to the Distribution Trustee, consistent with paragraph 29 of this Court's prior order dated August 12, 2009 (Docket No. 674).

41. Creation of Trust Accounts. The Distribution Trustee shall have the authority to create sub-accounts or sub-trusts within the Distribution Trust, which may have a separate legal existence, and which shall be considered subaccounts or sub-trusts of the Other Asset Trust Account, and into which the Distribution Trustee may deposit any non-Cash property, including real or personal property pending its liquidation. Such sub-accounts or sub-trusts may hold legal title to such property. Once liquidated, any Cash proceeds of such sub-accounts or sub-trusts shall be deposited directly into the Other Asset Trust Account. The act of transferring assets and rights to the Distribution Trust, as authorized by the Plan and this Order, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Distribution Trust as if the asset or right was still held by the applicable Debtor.

42. Fees and Expenses of the Distribution Trust. Distribution Trust Expenses shall be paid from the Distribution Trust as required, at the direction of the Distribution Trustee. Any Recovery Action Distribution Trust Expenses shall be paid solely from the Recovery Action Trust Account. Any Other Asset Distribution Trust Expenses shall be paid solely from the Other Asset Trust Account, subject to the provisions of Section II.F of the Plan. Any General Distribution Trust Expenses shall be allocated one-half to the Recovery Action Trust Account and one-half to the Other Asset Trust Account, which allocated amounts may be drawn from such accounts to fund the Distribution Trust Expense Account.

43. Expenses of Professionals of the Distribution Trust. The Distribution Trustee, on behalf of the Distribution Trust, may employ, without further order of the Court, professionals (including professionals previously employed by the Debtors or the Creditors' Committee) to assist in carrying out its duties hereunder and may compensate and reimburse the expenses of these professionals from the appropriate Trust Account, based upon the nature of the work performed by such professional, without further order of the Court, subject to the above limitations and any procedures established by the Distribution Trust Agreement.

44. Reports to be Filed by the Distribution Trustee. The Distribution Trustee, on behalf of the Distribution Trust, shall File with the Court (and provide to any other party entitled to receive any such report pursuant to the Distribution Trust Agreement), no later than 31 days after June 30 and December 31 of each calendar year, a semi-annual report regarding the administration of property subject to its ownership and control pursuant to the Plan, distributions made by it and other matters relating to the implementation of the Plan.

**M. Cancellation and Surrender of Instruments, Securities and Other Documentation**

45. Except as provided in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan and except for purposes of distributions on account of Allowed Customer Note Claims, Allowed 2013 Senior Note Claims and Allowed 2012 Senior Subordinated Claims as contemplated by Section V.C of the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all outstanding common stock, secured and unsecured notes, indentures, instruments and securities issued by any of the Debtors will be canceled and of no further force and effect, without any further action on the part of the Court, any Debtor or the Distribution Trustee. The holders of or parties to such canceled instruments and securities will have no rights arising from or relating to such instruments and securities or the cancellation thereof, except the rights

provided pursuant to the Plan; provided, however, that no distribution under the Plan will be made to or on behalf of any holder of an Allowed Claim evidenced by such canceled instruments or securities unless and until such instruments or securities are received by the applicable Disbursing Agent if required pursuant to Section V.M of the Plan.

46. Notwithstanding anything to the contrary in the Plan or this Order, the 2012 Senior Subordinated Note Indenture and the 2013 Senior Note Indenture shall continue to exist for the purposes set forth in Section V.G of the Plan.

**N. Substitution in Pending Legal Actions**

47. On the Effective Date, the Distribution Trust or the Distribution Trustee, as applicable, shall be deemed to be substituted as the party to any litigation in which the Debtors are a party, including (but not limited to) (i) pending contested matters or adversary proceedings in the Court, (ii) any appeals of orders of the Court and (iii) any state court or federal or state administrative proceedings pending as of the Petition Date. The Distribution Trustee and its professionals are not required to, but may take such steps as are appropriate to provide notice of such substitution.

**O. Binding Effect of Prior Orders**

48. Pursuant to section 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Distribution Trust, the Distribution Trustee and their respective successors and assigns.

**P. Final Order**

49. The stay of this Order imposed by Bankruptcy Rule 3020(e) is hereby waived in accordance with Bankruptcy Rule 3020(e). This Order is a final order, and the period in which an appeal must be Filed shall commence immediately upon the entry hereof.

**Q. Reversal**

50. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all related documents or any amendments or modifications thereto.

**R. Notice of Confirmation of the Plan and Effective Date**

51. Upon the occurrence of the Effective Date, pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Debtors and the Distribution Trustee are directed to serve a notice of the entry of this Order, the establishment of bar dates for certain Claims hereunder and the occurrence of the Effective Date, substantially in the form of Appendix III attached hereto and incorporated herein by reference (the "Confirmation and Effective Date Notice"), on all parties that received the Confirmation Hearing Notice. The Debtors and the Distribution Trustee are also directed to make copies of the Confirmation and Effective Date Notice available on BMC Group's website at [www.bmcgroup.com/metaldyne](http://www.bmcgroup.com/metaldyne).

## **S. Miscellaneous Provisions**

52. Nothing in the Disclosure Statement, Plan or the Confirmation Order alters the rights and obligations of the Debtors and the Debtors' insurers (and third party claims administrators) under applicable insurance policies (and the agreements related thereto) or modifies the coverage provided thereunder or the terms and conditions thereof. Any such rights and obligations shall be determined under the applicable insurance policies, any related agreement of the parties and applicable law.

53. MD Investors and the Distribution Trustee shall cooperate in accordance with, and otherwise comply with, the terms that are attached hereto as Appendix IV.

54. Notwithstanding any provision in Section V.K or other section of the Plan or the Distribution Trust Agreement regarding record dates, distributions on account of the Allowed Claims of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") shall be made in accordance with any and all specific agreements between the Debtors and the UAW.

55. Subject to the restrictions on alteration, amendment and modification set forth in section 1127 of the Bankruptcy Code and Section X.A of the Plan, the Debtors are hereby authorized to alter, amend or modify the Plan before the Effective Date.

56. On the Effective Date, the Creditors' Committee and any other official committees appointed in the Chapter 11 Cases will dissolve, and the members of the Creditors' Committee and their respective Professionals will cease to have any duty, obligation or role arising from or related to the Chapter 11 Cases. The Professionals retained by the Creditors' Committee and the respective members thereof will not be entitled to assert any Fee Claim whatsoever for any services rendered or expenses incurred after the Effective Date in their

capacity as professionals for the Creditors' Committee, except to the extent necessary to file, prepare and defend any fee application.

57. Failure specifically to include or reference specific evidence or particular sections or provisions of the Plan or any related agreement in this Order shall not diminish or impair the effectiveness of such sections or provisions, it being the intent of the Court that the Plan be confirmed and such related agreements be approved in their entirety.

58. Any document related to the Plan that refers to a plan of liquidation of the Debtors other than the Plan confirmed by this Order shall be, and it hereby is, deemed to be modified such that the reference to a plan of liquidation of the Debtors in such document shall mean the Plan confirmed by this Order, as appropriate.

59. Without intending to modify any prior Order of this Court (or any agreement, instrument or document addressed by any prior Order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan (including the Distribution Trust Agreement), on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement, instrument, or document).

60. In accordance with Section VIII.D of the Plan, if each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section VIII.C of the Plan within 60 days of the entry of the Confirmation Order, then upon motion by the Debtors or any party in interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Court may direct, the Confirmation Order may be vacated by the Court; provided, however, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied

or waived before the Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to Section VIII.D of the Plan, then (a) the Plan will be null and void in all respects; and (b) the Distribution Trust shall be promptly dissolved.

61. The business and assets of the Debtors shall remain subject to the jurisdiction of this Court until the Effective Date. Notwithstanding the entry of this Order, from and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Cases as is legally permissible, including jurisdiction over those matters and issues described in Article IX of the Plan.

Dated: **February 23, 2010**  
New York, New York

/s/ Martin Glenn  
United States Bankruptcy Judge