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

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In re:	:	
	:	Case No. 09-13412 (MG)
Metaldyne Corporation, <u>et al.</u> ,	:	
	:	Jointly Administered
Debtor.	:	
	:	
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**OBJECTION OF BDC FINANCE, L.L.C. TO FINDINGS OF FACT
AND RULINGS OF LAW EMBEDDED IN PROPOSED SALE ORDER**

BDC Finance, L.L.C. (“**Black Diamond**”) objects to the findings of fact and rulings of law embedded in the proposed sale order to be submitted by the Debtors on August 11, 2009 (“**Proposed Sale Order**”). In further support of its objection, Black Diamond states:

1. At the hearing on this contested matter on August 7, 2009, the Court instructed the parties to attempt to submit agreed language in a sale order relative to the reservations of rights of Black Diamond. The parties negotiated in good faith, exchanged drafts, and at approximately 2:30 p.m. on August 11 reached a consensus that they could not agree on

“reservation of rights” language (such language appears, in a form that Black Diamond believes to be inappropriately limited, in paragraph 39 of the most recent draft order).

2. In addition, on review of drafts of the Proposed Sale Order, it became evident that as to many proposed findings and rulings, the parties would not be able to reach agreement.

3. Accordingly, and pursuant to rule 9014(c) and 7052 of the Federal Rules of Bankruptcy Procedure, Black Diamond has submitted requests for findings and rulings (“**Black Diamond Requests**”), and hereby objects to certain of the proposed findings and rulings embedded in the Proposed Sale Order.

4. Proposed Findings B, E, F, J, L, O, S, T, U, V, and W are contradicted by the evidence and should be denied.

5. Proposed Findings G, H, K, and P are not supported by any evidence and should be denied.

6. The Debtors are seeking a waiver of the ten-day stay otherwise imposed by Bankruptcy Rule 6004(h). Proposed Sale Order §§ O, 11, 16 and 21. However, “[n]o specific exigencies sufficient to support the Debtors’ request have been demonstrated.” *See In re Dana Corporation*, 358 B.R. 567, 584 (Bankr. S.D.N.Y. 2006). To the contrary, the Debtors’ own evidence presented at the August 7 sale hearing confirmed, among other things, that the closing of the proposed sale cannot occur immediately in any event, due to the need for regulatory approvals.

7. In addition, the Debtors are seeking injunctive relief. Proposed Sale Order §§ B and 47. However, the Debtors may not secure an injunction simply by including injunctive provisions in MDI Investors’ desired form of sale order. Pursuant to Federal Rule of

Bankruptcy Procedure 7001, injunctive relief may only be obtained through an adversary proceeding. Fed. R. Bankr.P. 7001(7) (“An adversary proceeding is . . . a proceeding to obtain an injunction. . . .”). *See also In re On-Site Sourcing, Inc.*, 2009 WL 1789331, *7, n.6 (Bankr. E.D. Va. June 22, 2009) (“There is no provision for issuing injunctions in section 363.”); *In re Miles Garnett*, 47 B.R. 170, 171 (Bankr. E.D.N.Y. 1985) (chapter 7 debtor’s request for injunction procedurally defective for failure to file an adversary proceeding).

8. Black Diamond objects to all findings and rulings in the Proposed Sale Order that are inconsistent with the Black Diamond Requests.

Dated: New York, New York.
August 11, 2009

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