

**BEFORE THE CONSUMER PROTECTION DIRECTOR  
FOR THE STATE OF DELAWARE**

In the Matter of  EXETER FINANCE LLC
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**CEASE AND DESIST BY AGREEMENT**

**I. INTRODUCTION**

1. The State of Delaware (“State”), through the Delaware Department of Justice, Office of Attorney General Kathleen Jennings (“DEDOJ”), and Exeter Finance LLC (“Exeter”) have consented to this cease and desist by agreement pursuant to 29 Del. C. § 2525(a) (“Agreement”).

2. Exeter, a Delaware limited liability company, is a specialty auto finance company based in Irving, Texas.

3. Pursuant to 6 Del. C. § 73-401 and 29 Del. C. § 2520(a), the DEDOJ is conducting an ongoing investigation into the financing and securitization of non-prime (or subprime) automobile loans originated in Delaware (“Delaware Loans”), including default rates, underwriting standards, dealership misrepresentations, and loan servicing conduct. As part of this investigation, the DEDOJ reviewed Exeter’s business practices in Delaware.

4. Based on the DEDOJ’s review of Exeter’s activities, the DEDOJ alleges that Exeter facilitated the origination of certain Delaware Loans that Exeter knew or should have known were in violation of 6 Del. C. §§ 2511, *et seq.* Certain of these loans were securitized.

5. In resolution of these issues and in recognition of Exeter’s assistance and

cooperation throughout the investigation, the DEDOJ agrees to accept this Agreement on the terms and conditions contained herein, pursuant to Delaware law, 29 Del. C. § 2525(a). The DEDOJ and Exeter both voluntarily enter into this Agreement

6. This Agreement does not constitute an admission by Exeter of any fact or noncompliance with any state or federal law, rule, or regulation. Exeter enters into this Agreement for settlement purposes only and neither admits nor denies the DEDOJ's allegations. This Agreement is made without any trial or adjudication of any issue of fact or law.

## **II. REMEDATION AND UNDERTAKINGS**

7. At a date after the execution of this Agreement, which is to be decided between the DEDOJ and Exeter, but which in no event shall be later than ten (10) business days after the DEDOJ's provision of wiring and/or payment related instructions to Exeter, Exeter shall pay \$550,000 to an independent trust (the "Fund") for purposes of (i) making payments to provide relief for eligible customers, (ii) paying costs of implementation, and (iii) paying the DEDOJ's costs of investigation. The Fund shall be overseen by an independent trustee (the "Trustee") to be mutually agreed upon by the DEDOJ and Exeter within ten (10) business days of the date of this Agreement. If the DEDOJ and Exeter are unable to agree on the identity of the Trustee, the DEDOJ shall choose the Trustee in its sole discretion. The Trustee shall deposit the Fund into interest bearing accounts such that, to the extent possible: (i) all of the funds are fully guaranteed by the Federal Deposit Insurance Corporation or the United States Department of the Treasury; and (ii) the interest rate at the time of the aforementioned deposit is at least equal to the highest interest rate available from among the five largest banks in the City of Boston for a fully liquid federally insured deposit account holding such a sum of money. The Trustee will make investments and disbursements from the Fund only with the consent of the DEDOJ and may vary from the

investment criteria of this paragraph only with the consent of the DEDOJ. Exeter shall retain the Trustee and pay the Trustee's fees and costs associated with its duties under this Agreement separate and apart from all other payments required under this Agreement. Payments to the Trustee shall not exceed \$75,000. Exeter shall also, within ten business days after the DEDOJ's provision of wiring and/or payment related instructions to Exeter, pay \$50,000 to the State of Delaware.

8. No later than forty-five (45) business days after the date of this Agreement, the DEDOJ shall provide the Trustee with a list of borrowers that it preliminarily determines are eligible for relief based upon the information provided by Exeter, together with associated amounts (the "Relief List"). The Relief List shall include certain contracts acquired by Exeter from certain Delaware dealers that the DEDOJ, in its sole discretion and based upon its review of information and data, determines may have been made in violation of 6 Del. C. §§ 2511, *et. seq.* The Relief List shall be compiled from the loans identified in the document production dated April 3, 2019, provided to the DEDOJ by Exeter and shall include certain subprime contracts that were acquired by Exeter between 2011 and 2015 that charged off or are at elevated risk of charging off based on the DEDOJ's analysis. The DEDOJ shall have sole discretion concerning the nature and amount of relief to be provided to each borrower on the Relief List.

9. Within thirty (30) business days of receiving the Relief List, the Trustee shall provide the DEDOJ with the following information, to the extent the Trustee can obtain it without undue burden and in accordance with all requisite and advisable security protocols: the name, address, and social security number of the borrower, as well as any other information reasonably requested by the DEDOJ. This information shall be combined with the Relief List and the resulting list shall be known as the "Initial Borrower List." The DEDOJ may make such corrections or amendments to the Initial Borrower List as it deems appropriate in its sole discretion, provided

that the DEDOJ may not add borrowers to the List unless the borrower's loan was identified in the document production dated April 3, 2019, provided to the DEDOJ by Exeter. The finalized version of this list shall be referred to in this Agreement as the "Final Borrower List."

10. The DEDOJ may direct the Trustee to send a letter drafted by the DEDOJ to each borrower on the Final Borrower List. The letter shall include a web address and a dedicated telephone number for the Trustee that the recipient may use to obtain information concerning this Agreement. With each letter, the Trustee shall also include a postage paid return envelope and a form drafted by the DEDOJ for participation in the relief program of this Agreement ("Opt-in Form"). The letter shall also contain such other forms as the DEDOJ shall determine.

11. The Trustee shall send the letter and Opt-in Form within three (3) business days of the DEDOJ's direction and shall resend them, if undeliverable, by such means as the DEDOJ shall direct. Opt-in Forms executed and returned to the Trustee shall be maintained in a secure fashion. In addition, the Trustee shall keep in the same manner any additional Opt-in Forms provided to the Trustee by the DEDOJ.

12. The Trustee shall provide the DEDOJ with information relating to the loans and/or the relief program implementation reasonably available to the Trustee upon request. The Trustee shall cooperate fully with the DEDOJ in the implementation of this Agreement, and shall provide materials relevant to the implementation of this Agreement promptly to the DEDOJ upon request. Should the DEDOJ determine that additional letters are required in connection with implementing this Agreement, the Trustee shall send such letters at the DEDOJ's direction.

13. For each borrower for whom the Trustee receives an executed Opt-in Form, the Trustee shall take action as directed by the DEDOJ. Payments shall be made to identified recipients in the amounts specified on the Final Borrower List. If a check is not cashed within a

number of days to be determined by the DEDOJ, the DEDOJ may direct the Trustee to stop payment on the check.

14. At a date to be determined by the DEDOJ but no earlier than six (6) months from the date of this Agreement, the Trustee shall transfer any remaining monies in the Fund to the DEDOJ pursuant to 6 Del. C. § 2527 and such money shall be used for any purpose permitted by that statute including consumer financial education and outreach efforts.

15. Exeter shall waive any deficiency balances (following the repossession and sale of the vehicle) and other post-default charges otherwise due from the borrower in the amounts remaining as of the date of this Agreement on any contract on the Final Borrower List that charged off prior to the date of this Agreement and for which Exeter continues to own such contract as of the date of this Agreement. Exeter represents and warrants that it has the ability to cause these amounts and charges to be waived with respect to each such charged-off contract. The relief provided under this Agreement will have the effect of equitably reforming these contracts to be in compliance with law. Exeter shall also contact the credit reporting agencies and request the deletion of the trade line associated with the account for each contract on the Final Borrower List that charged off prior to the date of this Agreement.

16. If Exeter and/or the Trustee receives any letters or forms in relation to this Agreement from any borrower who received an offer under this Agreement, Exeter and/or the Trustee shall forward such forms to the DEDOJ even if the letters or forms are received outside of the time frames contemplated by this Agreement.

### **III. COOPERATION AND RECORD KEEPING**

17. Exeter shall cooperate with the DEDOJ in the implementation of this Agreement.

18. Exeter shall comply with all reasonable requests by the DEDOJ for documents or

information related to the subject matter of this Agreement.

19. Exeter shall create and maintain, for a period of at least three (3) years from the date of this Agreement all records necessary to demonstrate Exeter's compliance with its obligations under this Agreement and will provide such records to the DEDOJ upon request.

#### **IV. RELEASE AND MISCELLANEOUS PROVISIONS**

20. The DEDOJ will not recommend, proceed with, join in, or institute a civil action or proceeding, or make any referral, based upon 6 Del. C. §§ 73-101, *et seq.*, 6 Del. C. §§ 2511, *et. seq.*, or any other statute or regulation, or common law, against Exeter, or any of Exeter's present or former employees, officers, directors, managers, agents, subsidiaries and subdivisions, shareholders, investors, successors, assigns, or any purchasers of all or substantially all of its business assets, including but not limited to any action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, or costs, based upon the following Exeter conduct prior to the date of this Agreement: purchasing, financing, servicing, originating, and/or securitizing Delaware loans that did not comply with 6 Del. C. §§ 73-101, *et seq.* or 6 Del. C. §§ 2511, *et. seq.* Claims pertaining to (a) leases; and (b) civil rights statutes and regulations, are specifically excluded from this release. This release does not extend to dealers.

21. This Agreement constitutes the entire agreement between the DEDOJ and Exeter and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Agreement. This Agreement can be modified or supplemented only by a written document signed by both parties.

22. This Agreement is not intended to indicate that Exeter, or any of its present or former employees, officers, directors, managers, agents, subsidiaries and subdivisions, shareholders, successors, assigns, or any purchasers of all or substantially all of its business assets,

shall be subject to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon registration exemptions or safe harbor provisions, or other federal or state law. In addition, this Agreement is not intended to form the basis for any such disqualifications.

23. This Agreement will be binding upon Exeter and any of Exeter's agents, subsidiaries and subdivisions, successors, assigns, and/or purchasers of all or substantially all of Exeter's business assets.

24. The DEDOJ may extend any deadlines in this Agreement in its sole discretion.

25. This Agreement and its provisions will be effective on the date that it is fully executed by all parties.

26. Exeter represents and warrants that it has the full legal power, capacity, and authority to bind the parties for whom it is acting, including its subsidiaries.

27. The DEDOJ agrees that all confidential information disclosed to it by Exeter in the course of the investigation and in connection with this Agreement shall be kept confidential by the DEDOJ to the extent permitted by 29 Del. C. §§ 10001, *et seq.*

28. By signing below, Exeter agrees to comply with all of the terms of this Agreement. The parties shall work together in good faith to try to resolve any disputes or disagreements with respect to the terms of this Agreement. Any violation of this Agreement may be pursued in a civil or administrative action or proceeding under 29 Del. C. § 2526 hereafter commenced by the DEDOJ.

29. Notices to be sent pursuant to this Agreement shall be sent as follows:

To Exeter:  
Andrew W. Schilling  
Buckley LLP  
1133 Avenue of the Americas, Suite 3100  
New York, NY 10036

To the DEDOJ:  
Jillian Lazar  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801

Signed this 5<sup>th</sup> day of April, 2019.

**FOR EXETER FINANCE LLC**

By: 

Walter E. Evans  
EVP and General Counsel  
Exeter Finance LLC  
222 West Las Colinas Boulevard, Suite 1800  
Irving, TX 75039

**FOR THE DELAWARE DEPARTMENT  
OF JUSTICE**

By: 

Jillian Lazar  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-5088

  
Christian Douglas Wright  
Director of Consumer Protection