

ENTWISTLE & CAPPUCCI LLP

Andrew J. Entwistle
Frost Bank Tower
401 Congress Avenue, Suite 1170
Austin, Texas 78701

-and-

Joshua K. Porter
230 Park Avenue, 3rd Floor
New York, New York 10169

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

In re:

GARRETT MOTION INC., *et al.*,¹

Debtors.

Chapter 11 Case

No. 20-12212 (MEW)

(Joint Administration Requested)

**GABELLI FUNDS, LLC'S LIMITED OBJECTION TO DEBTORS' SOLICITATION
PROCEDURES MOTION AND RESERVATION OF RIGHTS**

Gabelli Funds, LLC ("Gabelli Funds") respectfully submits this limited objection to *Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Establishing a Voting Record Date; (III) Approving the Solicitation Packages and Solicitation Procedures; (IV) Approving the Forms of Ballots; (V) Establishing Voting and Tabulation Procedures; (VI) Establishing Notice and Objection Procedures for the Confirmation of the Plan and (VII)*

¹ The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which Debtors have requested joint administration, a complete list of Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of Debtors' claims and noticing agent at <http://www.kccllc.net/garrettmotion>. Debtors' corporate headquarters are located at La Pièce 16, Rolle, Switzerland.



Approving the Rights Offering Procedures and the Rights Offering Materials (ECF No. 714) (the “Solicitation Procedures Motion”), and reservation of rights.²

LIMITED OBJECTION

1. Gabelli Funds’ fundamental goal in these Chapter 11 Cases has been, and remains, maximizing recovery for all stakeholders, but particularly the more than 36,000 registered holders of approximately 45% of GMI common stock who were not aligned with the respective bids or proposals by KPS, COH Group, or the equity committee.

2. In this regard, Gabelli Funds appreciates the responsiveness of Debtors and the COH Group to Gabelli Funds’ input on behalf unaligned equity securities holders. The process substantially improved what will be equity security holders’ ultimate recovery, whether through the cash election or reinstatement of their equity on a less diluted basis (with or without participation in the rights offering). Gabelli Funds also thank the Honorable Sean Lane and his law clerk Caitlin O’Connell for their efforts in mediation.

3. Debtors and the COH Group advise they have amended the Plan and Disclosure Statement to provide that stockholders do not need to vote for the Plan or opt into the releases to exercise the cash out or any other rights.³ Those changes (which we are still reviewing at the time of this writing) respond to the Court’s concerns regarding 11 U.S.C. § 1123(a)(4) and the related aspect of the objection Gabelli Funds raised during the March 5, 2021 hearing.

² Debtors filed the Solicitation Procedures Motion on January 8, 2021 and the objection deadline was February 5, 2021 (*see* ECF No. 715). Because Debtors have since filed numerous iterations of the disclosure statement – and indeed the underlying transaction has changed from the stalking horse transaction with KPS Capital Partners, LP (“KPS”) to the transaction proposed by Centerbridge Partners, L.P. (“Centerbridge”), Oaktree Capital Management, L.P. (“Oaktree”) Honeywell International Inc. (“Honeywell”) (together, the “COH Group”) – this limited objection and reservation of rights is appropriate and timely.

³ Capitalized terms undefined herein shall have the meaning ascribed to them in the Debtors’ revised Plan (ECF No. 993) and Disclosure Statement (ECF No. 994).

4. Gabelli Funds file this limited objection to address the two remaining issues they raised at the prior hearing in connection with the Solicitation Procedures Motion, Disclosure Statement and Plan in order to further to protect the interests of holders in both Class 10 Section 510(b) Claims and Class 11 Existing Common Stock.

5. *First*, the Gabelli Funds object to Debtors' proposal to set the date of the disclosure hearing as the record date to determine Class 11 Existing Common Stock. The Debtors indicated at the last hearing that retail investors will receive the opportunity to exercise only about 60% of the rights available to accredited investors in the anticipated bifurcated rights offering due to the impact of 11 U.S.C. § 1145. The Amended Disclosure Statement appears to suggest retail investors will receive approximately 70% of the rights available to accredited investors. Either way, the detriment to retail investors is enormous and fairness requires that there be an effort to offset this detriment to the extent possible.

6. To offset the adverse impact to retail investors, Gabelli Funds believe retail investors should have a full opportunity to trade out of their existing position in advance of the record date. To do so they need to be appraised of the issue and have an opportunity to trade. Notice for this purpose can be easily accomplished by publication at little cost to the Estates. Setting the record date 30 days following this hearing will allow adequate time for notice to be given and for retail investors to trade. Equally importantly, there will be no adverse impact to Debtors or the Estates by setting the record date 30 days after the disclosure hearing given that Debtors have set April 21, 2021 for Confirmation.

7. *Second*, Gabelli Funds object to the language in the existing carve-out in the penultimate paragraph of the Section 11.10 release (*see* ECF No. 993 p. 68) in the Plan because the scope of shareholders included in the carve-out is confusing and potentially overly narrow.

8. As the Court may know, certain Gabelli Funds have been appointed by Judge John P. Cronan to serve as lead plaintiffs in *In re Garrett Motion Inc. Securities Litigation*, No. 20 Civ. 7992 (JPC) (S.D.N.Y.) (the “Securities Action”) on behalf of a putative class of investors that received common stock in the spin-off from Honeywell or purchased or otherwise acquired GMI securities between October 1, 2018 and September 18, 2020 (the trading day before GMI filed for bankruptcy protection).

9. There is no basis for the members of the putative class to grant third party releases under Section 11.10, nor is the existing language clear as to whether Section 11.10 applies to Classes 10 and 11 (who may be members of the class). Accordingly, the carve-out should be revised to specifically provide that no holder of Class 10 and 11 claims or any current or former holder of GMI securities who is included in the putative class as defined in the Securities Action shall be deemed to have released any litigation claims against Debtors, Debtors’ current and former directors or officers, or Honeywell or its current and former directors or officers:

“Notwithstanding the foregoing, no Releasing Party shall be deemed to have released (a) any Section 510(b) Claim against the Debtors, or (b) any claim arising from rescission of a purchase or sale of Existing Common Stock or for damages arising from the purchase or sale of Existing Common Stock against one or more of the Debtors’ current or former officers or directors, or Honeywell or Honeywell’s current or former officers or directors; provided that each Releasing Party shall only be entitled to assert the claims identified in ~~subclause (b)~~ above as a member of a class in a class action in which such Releasing Party is not a lead plaintiff and to respond to or oppose any objections or challenges to such Releasing Party’s inclusion in such class action. For the avoidance of doubt, no current or former holder of Existing Common Stock included in the putative class as defined in *In re Garrett Motion Inc. Securities Litigation*, No. 20 Civ. 7992 (JPC) (S.D.N.Y.) shall be deemed to have released the claims in subclasses (a) or (b) above.”

10. Separately, the Gabelli Funds have suggested to Debtors that the notice, election form and instructions for Class 10 Section 510(b) Claims and ballots and instructions for holders of Class 11 Existing Common Stock should clarify, all-capitalized and in bold, that:

“TO EXERCISE YOUR CASH OUT RIGHTS, EXERCISE ANY OTHER RIGHTS OR TO OTHERWISE RECOVER UNDER THE PLAN, YOU ARE NOT REQUIRED TO OPT-IN TO THE RELEASE IN SECTION 11.10 OF THE PLAN, WHICH IS ENTIRELY VOLUNTARY AND SEPARATE FROM YOUR RECOVERY UNDER THE PLAN”

RESERVATION OF RIGHTS

11. Gabelli Funds reserve all their rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this objection, in connection with the Solicitation Procedures Motion, or hearing on the Disclosure Statement or Confirmation of the Plan.

Dated: March 9, 2021

ENTWISTLE & CAPPUCCI LLP

/s/ Andrew J. Entwistle

Andrew J. Entwistle
Frost Bank Tower
401 Congress Avenue, Suite 1170
Austin, Texas 78701
Telephone: (512) 710-5960
Email: aentwistle@entwistle-law.com

Joshua K. Porter
230 Park Avenue, 3rd Floor
New York, New York 10169
Telephone: (212) 894-7282
Email: jporter@entwistle-law.com

Counsel for Gabelli Funds, LLC