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November 1, 2007

**BY HAND DELIVERY AND E-FILING**

The Honorable Leo E. Strine, Jr.  
Court of Chancery  
New Castle County Courthouse  
500 N. King Street  
Wilmington, Delaware 19801

Re: SLM Corp. v. J.C. Flowers II, L.P., et al., C.A. No. 3279-VCS

Dear Vice Chancellor Strine:

We write on behalf of J.C. Flowers II L.P., Bank of America, N.A., JPMorgan Chase Bank, N.A. Mustang Holding Company Inc. and Mustang Merger Sub, Inc. (collectively, the "Buying Group") in connection with the upcoming November 5, 2007 scheduling conference. The parties had originally agreed to present their positions orally at the conference, and not exchange letters. However, counsel for Sallie Mae advised us yesterday that they would be sending a letter. We thought it best, therefore, to set out the Buying Group's position in writing as well.

In our conversations with Sallie Mae's counsel, they have indicated that they would be seeking a trial date commencing in either February or April 2008. (The dates

apparently are dictated in part by Mr. Susman's availability.) We believe that either time frame would impair the Buying Group's ability to prepare its defense to a \$900 million claim.

In light of the complexities of this case and the stakes involved, the Buying Group believes that trial should be scheduled for September or October 2008, at the Court's convenience, less than one year from now. To accomplish this, the Buying Group proposes the following schedule:

- Document Discovery: On a rolling basis, to commence promptly and to be substantially completed in three months, *i.e.*, by January 30, 2008.<sup>1</sup>
- Fact Depositions: Five months (concluding by June 30, 2008). We expect that supplemental document production will also take place in this time frame.
- Expert Reports and Depositions: Two months (concluding by August 30, 2008).
- Dispositive motions: Simultaneous with expert discovery.

These time frames are reasonable and necessary. Sallie Mae's document request calls for materials from a huge number of individuals (approaching 90) at J.C. Flowers, JPMorgan Chase and Bank of America. Simply processing these individuals' electronic documents could take four weeks. After winnowing down the data by applying search terms and

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<sup>1</sup> The production could take longer to complete, and the estimate for substantial completion assumes that Sallie Mae promptly confers with the Buying Group to develop a protocol for electronic discovery, including identification of the appropriate search terms to be used to identify responsive electronic documents. To date, despite Sallie Mae's insistence on expedition, it has taken no steps to take advantage of the Buying Group's proposal that the parties confer on a protocol for electronic discovery.

de-duplicating documents, the Buying Group anticipates that review for privilege and responsiveness will be extremely time consuming. Document production from the law firms involved in negotiating the Merger Agreement will be similarly time consuming.

A five month period for fact depositions is also reasonable and appropriate.

Without having reviewed Sallie Mae's documents, the Buying Group estimates that it may need to take roughly 30 depositions of party and non-party witnesses to prepare its defense.

Deposition discovery will cover a wide range of subjects, including the negotiation of the Merger Agreement, the financing of the transaction, the effect on Sallie Mae of changed conditions in the credit markets, the effect on Sallie Mae of the enactment of the College Cost Reduction Act, and the preparation by Sallie Mae of the Required Information necessary to market the debt to finance the acquisition. The witnesses will include the senior Sallie Mae executives involved directly in the negotiations, the members of the Sallie Mae board who oversaw those negotiations, Sallie Mae's marketing, planning, government relations and finance executives, and Sallie Mae's lawyers and investment bankers. Moreover, under Section 10.01(b) of the Merger Agreement, the Buying Group is entitled to evaluate closing conditions up to and including February 15, 2008, the termination date of the Merger Agreement. Events and developments between now and that date are therefore relevant in determining whether the Buying Group has breached its obligations and will need to be the subject of discovery.

Both sides advised the Court at the October 22 scheduling conference that they intend to call expert witnesses at trial and, as the Court can appreciate, expert reports cannot be finalized and expert depositions taken until fact discovery is completed. Allowing two months

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The Honorable Leo E. Strine, Jr.

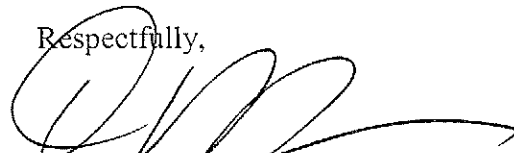
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for the parties to serve reports and rebuttal reports and then depose the experts is reasonable. As noted, to save time, any motions for summary judgment can be briefed while expert discovery is ongoing.

\* \* \*

As the Court recognized at the October 22 scheduling conference, once the Buying Group waived the covenants and other restrictions on Sallie Mae's conduct, the need for expedition was removed and "we really are in an ordinary kind of situation." We recognize that the Court intends that this matter proceed more promptly than the two years that is typical for non-expedited litigation, but we believe the Buying Group's proposal is consistent with that guideline. There is no longer any credible claim of irreparable injury to Sallie Mae: this case is simply a dispute about a sum of money — albeit, a very, very large sum of money. The Buying Group has no interest whatsoever in prolonging this litigation. Its only interest is in assuring that it has sufficient time to develop and prepare its defense. We believe that the schedule that we have proposed accomplishes that goal. We look forward to discussing these matters with the Court in Chambers on November 5.

Respectfully,



David C. McBride (No. 408)

Cc: Register in Chancery (by e-filing)  
Joel Friedlander, Esquire (by e-filing)  
Steven Susman, Esquire (by e-mail)