

GMAC LLC  
Form 8-K  
January 21, 2009

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): January 21, 2009 (January 16, 2009)

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**GMAC LLC**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction  
of incorporation)

**1-3754**

(Commission File Number)

**38-0572512**

(IRS Employer  
Identification No.)

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**200 Renaissance Center**

**P.O. Box 200**

**Detroit, Michigan**

**48265-2000**

(Address of principal executive offices) (Zip Code)

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Registrant's telephone number, including area code: **(313) 556-5000**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrants under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e -4(c))

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**Item 1.01 Entry Into a Material Definitive Agreement.**

Governance Agreement

On January 16, 2009, GMAC LLC, a Delaware limited liability company ( GMAC or the Company ), entered into a Governance Agreement (the Governance Agreement ) with FIM Holdings LLC, a Delaware limited liability company ( FIM ), GM Finance Co. Holdings LLC, a Delaware limited liability company ( GM HoldCo ) and the United States Department of the Treasury (the Treasury ) pursuant to which the parties established the composition of the Board of Managers of GMAC (the Board ) effective as of March 24, 2009 (the Effective Date ) in accordance with the terms set forth in the letter agreement dated December 29, 2008 (the Governance Letter ) among GMAC, GM HoldCo, FIM and GM Preferred Finance Co. Holdings LLC ( GM Preferred ).

Pursuant to the Governance Agreement, effective on the Effective Date (or such earlier date as may be agreed to by the parties), the Board will be comprised of seven Managers as follows: (i) one Manager (the FIM Manager ) designated (1) by FIM or (2) after either (x) the transfer by FIM of more than 50% of the Company s common membership interests ( Common Membership Interests ) held by FIM as of January 16, 2009 to its members or (y) the liquidation of FIM, by affiliates of Cerberus Capital Management, L.P. ( Cerberus ), (ii) two Managers (the UST Managers ) designated by a trust to be established by General Motors Corporation, a Delaware corporation ("GM"), GM HoldCo or one or more of their affiliates to hold equity securities of the Company, with a trustee designated by the Treasury (the UST Trust ), (iii) the chief executive officer of the Company and (iv) three independent Managers designated by the Managers described in clauses (i) through (iii) above. The chairman of the Board will be selected from among the independent Managers by a majority vote of the full Board.

FIM and affiliates of Cerberus will lose the right to designate the FIM Manager when such parties collectively cease to own at least 5% of the then outstanding Common Membership Interests. The UST Trust will lose its right to designate one UST Manager at such time as the UST Trust ceases to own at least 50% of the Common Membership Interests originally deposited into the UST Trust, and the UST Trust will lose the right to designate the remaining UST Manager when the UST Trust ceases to own at least 5% of the then outstanding Common Membership Interests.

In addition, for so long as FIM or its affiliates holds any Common Membership Interests, they will be entitled to appoint one non-voting observer to the Board, and for so long as GM HoldCo or its affiliates holds any Common Membership Interests of the Company, they will be entitled to appoint one non-voting observer to the Board.

The size of the Board may be increased by increasing the number of independent Managers (i) for so long as the UST Trust is entitled to designate two Managers, by a majority vote of the non-independent Managers (which majority must include at least one UST Manager), (ii) for so long as the UST Trust is entitled to designate only one Manager, a majority vote of the full Board (which majority must include the UST Manager) and (iii) following such time as the UST Trust is no longer entitled to designate a UST Manager, a majority vote of the full Board. The Governance Agreement further provides that the foregoing procedures will likewise apply with respect to the selection of all independent Managers.

The composition of the Board is in all respects subject to the rights of the holders of the Company s Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-1 and Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-2.

Pursuant to its terms, the Governance Agreement will terminate and be of no further force or effect upon the earlier of (i) an initial public offering of Common Membership Interests or, if earlier, listing of the Common Membership Interests on a national securities exchange and (ii) with respect to any party to the Governance Agreement, the date such party and its affiliates cease to own any Common Membership Interests. The Governance Agreement provides that it will survive and continue in full force in accordance with its terms in the event that the Company converts to a corporation.



Copies of the Governance Agreement and the Governance Letter are included as Exhibits 10.1 and 99.1 hereto, respectively, and are incorporated by reference herein. The foregoing summary of certain provisions of these documents is qualified in its entirety by reference thereto.

### **Item 3.02 Unregistered Sales of Equity Securities.**

On January 16, 2009, GMAC completed a rights offering (the Rights Offering ) pursuant to the Membership Interest Subscription Agreement dated as of December 29, 2008 (the Subscription Agreement ), by and among GMAC, GM and FIM. Pursuant to the Rights Offering, GMAC issued (i) 79,039 Class A Membership Interests of GMAC to FIM in exchange for a purchase price of \$365,975,868.80 and (ii) 190,921 Class B Membership Interests to GM HoldCo in exchange for a purchase price of \$884,024,131.20. There were no underwriting discounts or commissions paid in the issuance. The Class A Membership Interests and Class B Membership Interests were issued in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended.

Upon completion of the Rights Offering, the distribution rate on the Company's Class E Preferred Membership Interests was reduced from 15.25% per annum to 11.86% per annum pursuant to the terms of the Second Amended and Restated Limited Liability Company Operating Agreement of the Company, dated as of December 31, 2008 (the LLC Agreement ) and the interest rate on the 9% Cumulative Perpetual Preferred Stock of Preferred Blocker, Inc., a Delaware corporation and a subsidiary of the Company, was reduced from 9% to 7% pursuant to the terms of the Certificate of Designations of 9% Cumulative Perpetual Preferred Stock of Preferred Blocker Inc., dated as of December 31, 2008 (the Certificate of Designations ).

Copies of the Subscription Agreement, the LLC Agreement and the Certificate of Designations are included as Exhibits 10.2, 3.1 and 99.2 hereto, respectively, and are incorporated by reference herein. The foregoing summary of certain provisions of these documents is qualified in its entirety by reference thereto.

### **Item 5.01 Changes in Control of Registrant.**

The information set forth under Item 1.01 Entry Into a Material Definitive Agreement and Item 3.02 Unregistered Sales of Equity Securities is incorporated herein by reference.

As a result of the Rights Offering, GM HoldCo holds a total of 323,201 Class B Membership Interests, or approximately 59.86% of the outstanding Common Membership Interests of GMAC, which, pursuant to the LLC Agreement, represents approximately 59.86% of the voting power of the members of the Company for most matters requiring the vote of the members. FIM holds the remaining approximately 40.14% of the outstanding Common Membership Interests of GMAC in the form of 216,719 Class A Membership Interests. Prior to the Rights Offering, FIM held a majority of the voting control of the Company.

In connection with GMAC becoming a bank holding company under the Bank Holding Company Act of 1956, as amended (the BHC Act ), GM and Cerberus entered into various commitments and agreements with the Federal Reserve Board of Governors (the Federal Reserve ) to address concerns that GM or Cerberus would be deemed to control GMAC for purposes of the BHC Act. In particular, (i) GM committed to the Federal Reserve that it will reduce its ownership interest in GMAC to less than 10% of the voting and total equity of GMAC and (ii) Cerberus committed to the Federal Reserve that it will reduce the aggregate direct and indirect investments controlled by Cerberus and its related parties to no greater than 14.9% of the voting and 33% of the total equity of GMAC, in each case by March 24, 2009.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are filed herewith.

**Exhibit  
No.**

**Description of Exhibit**

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|------|---|
| 3.1  | Second Amended and Restated Limited Liability Company Operating Agreement, dated as of December 31, 2008, incorporated by reference to Exhibit 3.4 filed with GMAC's Current Report on Form 8-K filed with the SEC on January 2, 2009.  |
| 10.1 | Governance Agreement, dated as of January 16, 2009, by and between GMAC LLC, FIM Holdings LLC, GM Finance Co. Holdings LLC and the United States Department of the Treasury.  |
| 10.2 | Membership Interest Subscription Agreement, dated as of December 29, 2008, by and among GMAC LLC, General Motors Financial Services Inc., FIM Holdings LLC, incorporated by reference to Exhibit 10.3 filed with GMAC's Current Report on Form 8-K filed with the SEC on January 2, 2009. |
| 99.1 | Letter Agreement, dated as of December 29, 2008, by and between GMAC LLC, GM Finance Co. Holdings LLC, GMAC Holdings LLC and FIM Holdings LLC, incorporated by reference to Exhibit 99.3 filed with GMAC's Current Report on Form 8-K filed with the SEC on January 2, 2009.              |
| 99.2 | Certificate of Designations of 9% Cumulative Perpetual Preferred Stock of Preferred Blocker Inc., dated as of December 29, 2008.  |

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 21, 2009

**GMAC LLC**

By: David J. DeBrunner

David J. DeBrunner

Vice President, Chief Accounting Officer and Controller

**EXHIBIT INDEX**

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- 99.2 Certificate of Designations of 9% Cumulative Perpetual Preferred Stock of Preferred Blocker Inc., dated as of December 29, 2008, incorporated by reference to Exhibit 99.2 filed with GMAC's Current Report on Form 8-K filed with the SEC on January 2, 2009.