



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Gregory E. Lau  
Executive Director – Global Compensation  
General Motors Company  
300 Renaissance Drive  
MC 482-C32-B61  
Detroit, MI, 48265-3000

***Re: Proposed Compensation Payments and  
Structures for Senior Executive Officers and  
Most Highly Compensated Employees***

Dear Mr. Lau:

Pursuant to the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance, the Office of the Special Master has completed its review of your 2009 compensation submission on behalf of the Senior Executive Officers and certain Most Highly Compensated Employees of General Motors Company ("GM"). Attached as ***Annex A*** is a Determination Memorandum (accompanied by ***Exhibits I*** and ***II***) providing the determinations of the Special Master with respect to 2009 compensation for those employees. 31 C.F.R. § 30.16(a)(3).

The Interim Final Rule requires the Special Master to determine whether the compensation structure for each senior executive officer and certain most highly compensated employees "will or may result in payments inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest." *Id.* § 30.16(a)(3). The Special Master has determined that, to satisfy this standard, 2009 compensation for GM's senior executive officers and certain most highly compensated employees generally must comport with the following standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master.
- Rather than cash, the majority of each Corporate Employee's base salary will be paid in the form of stock. This stock will immediately vest, in accordance with the Interim Final Rule, but will only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GM repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In GM's case, cash compensation for these employees will decrease 31.0% from 2008 levels.
- Total compensation for each individual must both reflect the individual's value to GM and be appropriate when compared with the total compensation provided to persons in similar positions or roles at similar entities, and should target the 50th percentile of total compensation for such similarly situated employees. Overall, total direct compensation must be reduced from 2008 amounts. In GM's case, total direct compensation for these employees will decrease 20.4% from 2008 levels.
- If, and only if, the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, the employee may be eligible for long-term incentive awards. All such awards must be payable in the form of restricted stock that will be forfeited unless the employee stays with GM for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of GM's TARP obligations that are repaid. Such long-term incentive awards may not exceed one-third of total annual compensation.
- Any and all incentive compensation paid to employees will be subject to recovery or "clawback" if the payments are based on materially inaccurate financial statements or any other materially inaccurate performance metrics, or if the employee is terminated due to misconduct that occurred during the period in which the incentive was earned.
- Any and all "other" compensation and perquisites will not exceed \$25,000 for each employee (absent exceptional circumstances for good cause shown).
- No severance benefit to which an employee becomes entitled in the future may take into account a cash salary increase, or any payment of stock salary, that the Special Master has approved for 2009.
- No additional amounts in 2009 may be accrued under supplemental executive retirement plans or credited by the company to other "non-qualified deferred compensation" plans after the date of the Determination Memorandum.

The Special Master has also determined that, in order for the approved compensation structures to satisfy the standards of 31 C.F.R. § 30.16(a)(3), GM must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Executive Compensation Committee of GM's Board of Directors, which is composed solely of independent directors, to the Office of the Special Master or, subject to the approval of the Special Master, in such other manner as is

determined by the compensation committee. These performance objectives must be reviewed and approved by the Office of the Special Master.

- The employees will be prohibited from engaging in any hedging, derivative or other transactions that have an equivalent economic effect that would undermine the long-term performance incentives created by the compensation structures.
- GM may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Executive Compensation Committee of GM’s Board of Directors must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten GM’s value.

These requirements are described in further detail in the attached Determination Memorandum.

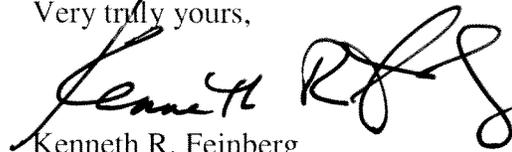
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GM’s compensation structures:

- *Performance-based compensation.* The majority of approved compensation depends on GM’s performance, and ties the financial incentives of GM employees to the overall performance of the Company. A majority of the salary paid to employees under these structures will be paid in the form of stock; and, because the stock salary will become transferable only in three equal, annual installments beginning on the second anniversary of the date the stock salary is earned (with each installment redeemable one year earlier if GM repays its TARP obligations), the ultimate value realized by the employee will depend on GM’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. 31 *Id.* § 30.16(b)(1)(iv).
- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for GM to remain a competitive enterprise and, ultimately, to be able to repay TARP obligations. The Special Master has determined that the approved compensation structures are competitive when compared to those provided to persons in similar positions or roles at similar entities. Overall, the compensation structures generally provide for total compensation packages well below the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to GM employees is weighted heavily toward long-term structures that are tied to GM’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to GM employees should consist

only of cash salaries at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in the Determination Memorandum. If GM does not request reconsideration within 30 days, these initial determinations will be treated as final determinations. *Id.* § 30.16(c)(1).

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth R. Feinberg". The signature is written in a cursive style with a large, looping initial "K".

Kenneth R. Feinberg  
Office of the Special Master  
for TARP Executive Compensation

Attachments

cc: Ms. Mary T. Barra

**ANNEX A**  
**DETERMINATION MEMORANDUM**

**I. INTRODUCTION**

The Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009 (“EESA”), requires the Secretary of the Treasury to establish standards related to executive compensation and corporate governance for financial institutions receiving financial assistance under the Troubled Asset Relief Program (“TARP”). Through the Department of the Treasury’s Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the “Rule”), the Secretary delegated to the Office of the Special Master for TARP Executive Compensation (the “Office of the Special Master” or, the “Office”) responsibility for reviewing compensation structures of certain employees at financial institutions that received exceptional financial assistance under the TARP (“Exceptional Assistance Recipients”). 31 C.F.R. § 30.16(a); *id.* § 30.16(a)(3). For these employees, the Special Master must determine whether the compensation structure will or may result in payments “inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” *Id.*

General Motors Company (“GM” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures (the “Proposed Structures”) for review pursuant to Section 30.16(a)(3) of the Rule. These proposals apply to three employees that the Company has identified as Senior Executive Officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and seventeen employees the Company has identified as among the most highly compensated employees of the Company for purposes of the Rule (the “Most Highly Compensated Employees,” and, together with the SEOs, the “Covered Employees”).

The Covered Employees comprise two business unit categories: GM corporate employees (“Corporate Employees”) and employees of GM’s asset management unit (“Promark Employees”). The relatively heavy concentration of Promark Employees among the Covered Employee group—fifteen of the twenty employees—resulted from the method used to calculate a Most Highly Compensated Employee’s compensation under the Rule. As a result of the accounting technique used to value equity compensation under this method, GM corporate employees who otherwise may have been Most Highly Compensated Employees saw their compensation reduced greatly because of the stock performance of GM’s predecessor in 2008.

The Special Master has completed the review of the Company’s Proposed Structures for the Covered Employees pursuant to the principles set forth in the Rule. *Id.* § 30.16(b)(1). This Determination Memorandum sets forth the determinations of the Special Master, pursuant to Section 30.16(a)(3) of the Rule, with respect to the Covered Employees.

## II. BACKGROUND

On June 15, 2009, the Department of the Treasury (“Treasury”) promulgated the Rule, creating the Office of the Special Master and delineating its responsibilities. Immediately following that date, the Special Master, and the Department of the Treasury employees working in the Office of the Special Master, conducted extensive discussions with GM officials. During these discussions, the Office of the Special Master informed GM about the nature of the Office’s work and the authority of the Special Master under the Rule. These discussions continued for a period of months, during which the Special Master and GM explored potential compensation structures for the Covered Employees.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for each Senior Executive Officer and Most Highly Compensated Employee no later than August 14, 2009. 31 C.F.R. § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including GM, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s compensation structures. The request required GM to submit data describing its proposed compensation structures, and the payments that would result from the proposed structures, concerning each Covered Employee.

In addition, the Rule authorizes the Special Master to request information from an Exceptional Assistance Recipient “under such procedures as the Special Master may determine.” *Id.* § 30.16(d). GM was required to submit competitive market data indicating how the amounts payable under GM’s Proposed Structures relate to the amounts paid to persons in similar positions or roles at similar entities. GM was also required to submit a range of documentation, including information related to proposed performance metrics, internal policies designed to curb excessive risk, and certain previously existing compensation plans and agreements.

GM submitted this information to the Office of the Special Master on August 7, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that GM’s submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3). The Office of the Special Master then commenced a formal review of GM’s Proposed Structures for the Covered Employees. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.* § 30.16(a)(3).

The Office of the Special Master’s review of the Company’s proposals was aided by analysis from a number of internal and external sources, including:

- Treasury personnel detailed to the Office of the Special Master, including executive compensation specialists with significant experience in reviewing, analyzing, designing and administering executive compensation plans, and attorneys with experience in matters related to executive compensation;

- Competitive market data provided by the Company in connection with its submission to the Office of the Special Master;
- External information on comparable compensation structures extracted from the *U.S. Mercer Benchmark Database-Executive*;
- External information on comparable compensation structures extracted from Equilar’s *ExecutiveInsight* database (which includes information drawn from publicly filed proxy statements) and Equilar’s *Top 25 Survey Summary Report* (which includes information from a survey on the pay of highly compensated employees);
- Consultation with Lucian A. Bebchuk, a world-renowned expert in executive compensation and the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School; and
- Consultation with Kevin J. Murphy, a world-renowned expert in executive compensation and the Kenneth L. Trefftz Chair in Finance in the department of finance and business economics at the University of Southern California’s Marshall School of Business.

The Special Master considered these views, in light of the statutory and regulatory standards described in Part II below, when evaluating the Company’s Proposed Structures for the Covered Employees for 2009.

### III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees whether GM’s Proposed Structures, including amounts payable or potentially payable under the compensation structure, “will or may result in payments that are inconsistent with the purposes of section 111 of EESA or TARP, or [is] otherwise contrary to the public interest.” 31 C.F.R. § 30.16(a)(3) (as applied to Covered Employees of Exceptional Assistance Recipients, the “Public Interest Standard”). Regulations promulgated pursuant to the Rule require that the Special Master consider six principles when making these compensation determinations:

- (1) *Risk*. The compensation structure should avoid incentives which encourage executive officers and employees to take unnecessary or excessive risks that could threaten the value of the exceptional assistance recipient, including incentives that reward employees for short-term or temporary increases in value or performance; or similar measures that may undercut the long-term value of the exceptional assistance recipient. Compensation packages should be aligned with sound risk management. *Id.* § 30.16(b)(1)(i).

- (2) *Taxpayer return.* The compensation structure and amount payable should reflect the need for the exceptional assistance recipient to remain a competitive enterprise, to retain and recruit talented employees who will contribute to the recipient's future success, so that the Company will ultimately be able to repay its TARP obligations. *Id.* § 30.16(b)(1)(ii).
- (3) *Appropriate allocation.* The compensation structure should appropriately allocate the components of compensation such as salary and short-term and long-term performance incentives, as well as the extent to which compensation is provided in cash, equity, or other types of compensation such as executive pensions, or other benefits, or perquisites, based on the specific role of the employee and other relevant circumstances, including the nature and amount of current compensation, deferred compensation, or other compensation and benefits previously paid or awarded. *Id.* § 30.16(b)(1)(iii).
- (4) *Performance-based compensation.* An appropriate portion of the compensation should be performance-based over a relevant performance period. Performance-based compensation should be determined through tailored metrics that encompass individual performance and/or the performance of the Exceptional Assistance Recipient or a relevant business unit taking into consideration specific business objectives. Performance metrics may relate to employee compliance with relevant corporate policies. In addition, the likelihood of meeting the performance metrics should not be so great that the arrangement fails to provide an adequate incentive for the employee to perform, and performance metrics should be measurable, enforceable, and actually enforced if not met. *Id.* § 30.16(b)(1)(iv).
- (5) *Comparable structures and payments.* The compensation structure, and amount payable where applicable, should be consistent with, and not excessive, taking into account compensation structures and amounts for persons in similar positions or roles at similar entities that are similarly situated, including, as applicable, entities competing in the same markets and similarly situated entities that are financially distressed or that are contemplating or undergoing reorganization. *Id.* § 30.16(b)(1)(v).
- (6) *Employee contribution to TARP recipient value.* The compensation structure and amount payable should reflect the current or prospective contributions of an employee to the value of the Exceptional Assistance Recipient, taking into account multiple factors such as revenue production, specific expertise, compliance with company policy and regulation (including risk management), and corporate leadership, as well as the role the employee may have had with respect to any change in the financial health or competitive position of the recipient. *Id.* § 30.16(b)(1)(vi).

The Rule provides that the Special Master shall have discretion to determine the appropriate weight or relevance of a particular principle depending on the facts and circumstances surrounding the compensation structure or payment for a particular

employee. *Id.* § 30.16(b). To the extent two or more principles may appear inconsistent in a particular situation, the Rule requires that the Special Master exercise his discretion in determining the relative weight to be accorded to each principle. *Id.*

The Rule provides that the Special Master may, in the course of applying these principles, take into account other compensation structures and other compensation earned, accrued, or paid, including compensation and compensation structures that are not subject to the restrictions of section 111 of EESA. For example, the Special Master may consider payments obligated to be made by the Company pursuant to certain legally binding rights under valid written employment contracts entered into prior to enactment of the statute and the accompanying Rule. *Id.* § 30.16(a)(3).

#### **IV. COMPENSATION STRUCTURES AND PAYMENTS**

##### **A. GM Proposals**

GM provided the Office of the Special Master with detailed information concerning its 2009 Proposed Structures for the Covered Employees, including amounts potentially payable under the Proposed Structures for each Covered Employee (the “Proposed Structures”).

GM’s proposals for Corporate Employees and Promark Employees reflected the significant differences between the businesses and their customary compensation structures. The Corporate Employees generally manage the Company’s automotive business and their compensation structure is weighted more heavily toward stock salary than the Promark Employees, who manage GM and third-party pension trust fund and other assets.

GM supported its Proposed Structures with detailed assessments of each Covered Employee’s tenure and responsibilities at the Company (or its applicable subsidiary) and historical compensation structure. The submission also included market data that, according to the Company, indicated that the amounts potentially payable to each employee were comparable to the compensation payable to persons in similar positions or roles at a “peer group” of entities selected by the Company. Separate peer groups were provided for the Corporate Employees and the Promark Employees.

##### **1. Cash Salary**

GM proposed raising the cash salary of each Covered Employee to annual rates of up to \$1,800,000 million for Corporate Employees and up to \$658,000 for Promark Employees. Under GM’s proposal, all Covered Employees’ salaries would increase for the remainder of 2009 to the levels at which they were paid prior to across-the-board salary reductions earlier in 2009.

## 2. Stock Salary

GM proposed that certain Covered Employees receive substantial stock salary over the remainder of 2009, in amounts of up to \$2,235,000. On each regular payroll date, Covered Employees would earn fully vested stock units, which would then settle in their entirety on January 2, 2011.

## 3. Annual Long-Term Incentive Awards

GM proposed that the Covered Employees receive annual long-term incentive awards, in amounts ranging from \$145,733 to \$1,815,000. Under the proposal, employees would receive awards generally equal to one third of total 2009 compensation, payable in long-term restricted stock that would vest on the last to occur of a public offering, the second anniversary of the award date and GM's repayment of its TARP obligations.

## 4. "Other" Compensation and Perquisites

GM proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

## 5. Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive compensation in the form of accruals under a "non-qualified deferred compensation" plan.

## **B. Determinations of the Special Master**

The Special Master has reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part II above. In light of this review and analysis, the Special Master has determined that both the structural design of GM's proposals and the amounts potentially payable to Covered Employees under the proposals are inconsistent with the Public Interest Standard and, therefore, require modification.

The Special Master has determined, in light of the considerations that follow, that the compensation structures described in *Exhibits I* and *II* to this Determination Memorandum will not, by virtue of either their structural design or the amounts potentially payable under them, result in payments inconsistent with the Public Interest Standard.

### 1. Cash Salary

The Special Master reviewed the cash salary proposals in light of the principle that compensation structures should generally be comparable to "compensation structures and amounts for persons in similar positions or roles at similar entities." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has concluded generally that, for Covered Employees at Exceptional Assistance Recipients, cash salaries should generally target the 50th percentile because such levels of cash salaries balance the need to attract and retain

talented with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting the review of proposed cash salary amounts, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that GM's proposed cash salaries for certain Corporate Employees and certain Promark Employees would be inconsistent with the Public Interest Standard because these amounts cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

In addition, because cash salaries do not create incentives for employees to pursue long-term value creation or financial stability, the amount of cash salary provided to a Covered Employee must be considered in comparison to the portion of compensation that is "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that the cash portion of the Covered Employee's compensation is not performance-based and generally should not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii).

As described in further detail in *Exhibits I* and *II*, the cash salaries that the Special Master has determined are consistent with the Public Interest Standard compare appropriately to those paid to persons in similar positions or roles at similar entities, and are generally less than \$500,000.

## 2. Stock Salary

The Special Master performed a review of the amount of stock salary GM proposed to pay the Covered Employees. The Special Master determined that GM's stock salary proposal would place the Covered Employees at or below the 50th percentile of compensation for persons in similar positions or roles at similar entities. These amounts are described in further detail in *Exhibits I* and *II*.

The Special Master also reviewed the structure of GM's stock salary proposal. The Rule requires that the Special Master consider whether an appropriate portion of an employee's compensation is allocated to long-term incentives *Id.* § 30.16(b)(1)(iii). Stock salary that can be liquidated too soon could incentivize employees to pursue short-term results instead of long-term value creation. See *Id.* § 30.16(b)(1)(i). Under the Company's proposal, all stock salary would be redeemable by the employee in slightly more than one year after being granted. The Special Master has concluded that one year is an insufficient holding period to provide an appropriate long-term incentive.

As described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard require that stock salary become redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year earlier if GM repays its TARP obligations.

### 3. Annual Long-Term Incentive Awards

The Special Master reviewed GM's proposed annual long-term incentive awards in light of the principle that performance-based compensation should be based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* § 30.16(b)(1)(iv). GM's proposed annual long-term incentive awards included overall business goals. Neither the amounts of the awards allocated to individual employees nor the percentage of the awards that would vest would be calculated by the level of individual achievement. As a result, the Special Master has concluded that GM's proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because they do not include tailored performance metrics.

The Special Master also evaluated GM's proposal in light of recently adopted international standards providing that incentive compensation should generally be payable over a period of three years, as well as the Rule's principle providing that performance-based compensation should be payable "over a relevant performance period," *id.* Under GM's proposal, the restricted stock could become fully vested after only two years of service. Accordingly, the Special Master has concluded that GM's proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because they may vest over a period too short to be relevant to the long-term performance of the Company.

As described in *Exhibits I* and *II*, the structures the Special Master has determined to be consistent with the Public Interest Standard include an annual long-term incentive award payable only upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master, and that will not vest unless the employee remains employed until the third anniversary of grant. In addition, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of GM's TARP obligations that are repaid.

### 4. "Other" Compensation and Perquisites

GM proposed payments of "other" compensation, as well as perquisites, to the Covered Employees. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that significant portions of compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

The Rule requires that each Exceptional Assistance Recipient annually disclose to Treasury any perquisites where the total value for any Senior Executive Officer or Most Highly Compensated Employee exceeds \$25,000. An express justification for offering these benefits must also be disclosed. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard provide no more than \$25,000 in "other" compensation and perquisites to each of these employees. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master. To the extent that payments

exceeding this limitation have already been made to a Covered Employee in 2009, those amounts should be promptly returned to the Company.

#### 5. Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive compensation in the form of accruals under a “non-qualified deferred compensation” plan. In such plans, employers periodically credit employees with an entitlement to post-retirement payments. Over time, these credits accumulate and employees may become entitled to substantial cash guarantees payable on retirement—in addition to any payments provided under retirement plans maintained for employees generally.

The Special Master has concluded that the primary portion of a Covered Employee’s compensation package should be allocated to compensation structures that are “performance-based over a relevant performance period.” *Id.* § 30.16(b)(1)(iv). Payments under the Company’s “non-qualified deferred compensation” plans do not depend upon “individual performance and/or the performance of the [Company] or a relevant business unit,” *id.*; instead, such accruals are simply guaranteed cash payments from the Company in the future. In addition, these payments can make it more difficult for shareholders to readily ascertain the full amount of pay due a top executive upon leaving the firm.

Covered Employees should fund their retirements using wealth accumulated based on Company performance while they are employed, rather than being guaranteed substantial retirement benefits by the Company regardless of Company performance during and after their tenures. Accordingly, as described in *Exhibits I* and *II*, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard prohibit further 2009 accruals for Covered Employees under supplemental retirement plans or Company credits to other “non-qualified deferred compensation” plans following the date of this Determination Memorandum.

#### 6. Severance Arrangements

The Special Master has concluded that an increase in the amounts payable under these arrangements would be inconsistent with the principle that compensation should be performance-based, *id.* § 30.16(b)(1)(iv), and that payments should be appropriately allocated among the elements of compensation, *id.* § 30.16(b)(1)(iii). Accordingly, for the compensation structures described in *Exhibits I* and *II* to be consistent with the Public Interest Standard, the Company must ensure that 2009 compensation structures for these employees do not result in an increase in the amounts payable pursuant to these arrangements.

#### 7. Departed Employees

In addition, three employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to these employees, the Special Master has determined that cash salaries through the date of the termination of employment, and payment of up to \$25,000 in perquisites and “other”

compensation are consistent with the Public Interest Standard. No other payments to these employees of any kind would be consistent with the Public Interest Standard. Any exceptions to this limitation will require that the Company provide to the Office of the Special Master an independent justification for the payment that is satisfactory to the Special Master.

## V. CORPORATE GOVERNANCE

As noted in Part III above, the Rule requires the Special Master to consider the extent to which compensation structures are “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). In light of the importance of this principle, GM must take certain additional corporate governance steps, including those required by the Rule, to ensure that the compensation structures for the Covered Employees, and the amounts payable or potentially payable under those structures, are consistent with the Public Interest Standard.

### A. Requirements Relating to Compensation Structures

In order to ensure that objective compensation performance criteria are “measurable, enforceable, and actually enforced if not met,” *id.* § 30.16(b)(1)(iv), long-term incentive awards may not vest unless the Company’s compensation committee determines that the applicable level of performance—as measured against objective performance criteria that the compensation committee has developed and reviewed in consultation with the Office of the Special Master—has been met. This determination must be certified by the compensation committee to the Office of the Special Master or, subject to the approval of the Special Master, in such other manner as is determined by the compensation committee.

In addition, as noted in Part IV, above and described in *Exhibits I* and *II*, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in the Company. It is critical that these compensation structures achieve the Rule’s objective of “appropriate[ly] allocat[ing] the components of compensation [including] long-term incentives, as well as the extent to which compensation is provided in...equity,” *id.* § 30.16(b)(iii).

The Company must have in effect a policy that would prohibit an employee from engaging in hedging, derivative or other transactions that have an economically similar effect that would undermine the incentives created by the compensation structures set forth in *Exhibits I* and *II*. Such transactions would be contrary to the principles set forth in the Rule.

### B. Additional Requirements

In addition to the requirements set forth above, pursuant to the requirements of the Rule, the Company is required to institute the following corporate governance reforms:

- (1) *Executive Compensation Committee; Risk Review.* GM must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with GM's senior risk officers any risks that could threaten the value of GM. In particular, the committee must meet every six months to discuss, evaluate, and review the terms of each employee compensation plan to identify and limit the features in (1) SEO compensation plans that could lead SEOs to take unnecessary and excessive risks that threaten the value of the GM; (2) SEO or other employees' compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employee compensation plans that could encourage the manipulation of GM's reported earnings to enhance the compensation of any of the employees. *id.* § 30.4; *id.* § 30.5.
- (2) *Disclosure with Respect to Compensation Consultants.* The Executive Compensation Committee must disclose to Treasury an annual narrative description of whether GM, its Board of Directors, or the committee has engaged a compensation consultant during the past three years. If so, the Executive Compensation Committee must detail the types of services provided by the compensation consultant or any affiliate, including any "benchmarking" or comparisons employed to identify certain percentile levels of compensation. *Id.* § 30.11(c).
- (3) *Disclosure of Perquisites.* As noted in Part IV, GM must provide to Treasury an annual disclosure of any perquisite whose total value for GM's fiscal year exceeds \$25,000 for each of the Covered Employees. GM must provide a narrative description of the amount and nature of these perquisites, the recipient of these perquisites, and a justification for offering these perquisites (including a justification for offering the perquisite, and not only for offering the perquisite with a value that exceeds \$25,000). *Id.* § 30.11(b).
- (4) *Clawback.* GM must ensure that any incentive award paid to a Covered Employee is subject to a clawback if the award was based on materially inaccurate financial statements (which includes, but is not limited to, statements of earnings, revenues, or gains) or any other materially inaccurate performance metric criteria. GM must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Policy Addressing Excessive or Luxury Expenditures.* GM was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on GM's website. If GM's board of directors makes any material amendments to this policy, within ninety days of the adoption of the amended policy, the board of directors must provide the amended policy to Treasury and post the amended policy on its Internet website. *Id.* § 30.12.
- (6) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, GM is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).

- (7) *CEO and CFO Certification.* GM's chief executive officer and chief financial officer must provide written certification of GM's compliance with the various requirements of section 111 of EESA. The precise nature of the required certification is identified in the Rule. *Id.* § 30.15 Appx. A.

## VI. CONCLUSION

The Special Master has reviewed the Proposed Structures for the Covered Employees for 2009 in light of the principles set forth at 31 C.F.R. § 30.16(b). On the basis of that review, the Special Master has determined that the Proposed Structures submitted by GM require modification in order to meet the Public Interest Standard.

The Special Master has separately reviewed the compensation structures set forth in *Exhibits I* and *II* in light of the principles set forth at 31 C.F.R. § 30.16(b). Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3) thereof, the Special Master hereby determines that the compensation structures set forth in *Exhibits I* and *II*, including the amounts payable or potentially payable under such compensation structures, will not result in payments that are inconsistent with the purposes of section 111 of EESA or the TARP, and will not otherwise be contrary to the public interest.

Pursuant to the Interim Final Rule, GM may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in this Determination Memorandum. The request for reconsideration must specify a factual error or relevant new information not previously considered, and must demonstrate that such error or lack of information resulted in a material error in the initial determinations. If GM does not request reconsideration within 30 days, the determinations set forth herein will be treated as final determinations. 31 C.F.R. § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in *Exhibits I* and *II*, and shall not be relied upon with respect to any other employee. The determinations are limited to the authority vested in the Special Master by Section 30.16(a)(3) of the Rule, and shall not constitute, or be construed to constitute, the judgment of the Office of the Special Master or Treasury with respect to the compliance of any compensation structure with any other provision of the Rule. Moreover, this Determination Memorandum has relied upon, and is qualified in its entirety by, the accuracy of the materials submitted by GM to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

**EXHIBIT I**  
**COVERED EMPLOYEES**

**2009 Compensation**

**Company Name: General Motors Company**

Employee ID	Cash Salary (Rate going forward.)	Stock Salary (Performance based: The stock vests at grant and is redeemable in three equal, annual installments beginning on the 2nd anniversary of grant.)	Long-Term Restricted Stock (Performance based: Awarded based on achievement of objective performance goals. Vests after 3 years of service. Transferability dependent on TARP repayment.)	Total Direct Compensation (Cash salary paid to date plus two months at new run rate + stock salary + long-term restricted stock.)
	\$950,000	\$2,421,667	\$1,815,000	\$5,445,000
	\$400,000	\$88,317	\$233,408	\$700,225
	\$450,000	\$137,717	\$224,908	\$674,725
	\$353,333	\$11,567	\$172,533	\$517,600
	\$750,000	\$436,467	\$493,858	\$1,481,575
	\$276,667	\$96,041	\$183,021	\$549,062
	\$500,000	\$316,222	\$426,994	\$1,280,883
	\$433,333	\$312,894	\$314,342	\$943,025
	\$500,000	\$576,667	\$630,000	\$1,881,000
	\$443,333	\$194,594	\$241,475	\$724,425
	\$326,667	\$123,091	\$190,296	\$570,887
	\$313,333	\$131,357	\$181,928	\$545,785
	\$233,333	\$61,967	\$145,733	\$437,200
	\$500,000	\$353,300	\$365,158	\$1,095,475
	\$426,667	\$186,817	\$277,658	\$832,975
	\$500,000	\$279,778	\$353,889	\$1,061,667
	\$306,667	\$79,517	\$173,008	\$519,025
	\$294,500	\$38,967	\$166,733	\$500,200
	\$276,667	\$187,250	\$204,875	\$614,625
	\$500,000	\$409,222	\$526,319	\$1,578,958

**Comparison of 2009 Compensation to Prior Years: 2007 & 2008 Compensation**

**2008** Cash decreased by \$3.9M or 31.0%  
Total Direct Compensation decreased by \$5.6M or 24.7%

**2007** Cash decreased by \$7.4M or 46.0%  
Total Direct Compensation decreased by \$4.4M or 16.9%

Note: 1: Amounts reflected in this Exhibit do not include amounts the Company has asserted to be payable pursuant to legally binding rights under valid employment contracts, see 31 C.F.R. § 30.10(e)(2).

Note: 2: The total number of Covered Employees may be less than 25 because of terminations, departures and retirements after January 1, 2009.

**EXHIBIT II**  
**TERMS AND CONDITIONS OF PAYMENTS AND STRUCTURES**  
**CONSISTENT WITH THE PUBLIC INTEREST STANDARD**

The following general terms and conditions shall govern the compensation structures described in *Exhibit I*. The Special Master's determination that these structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- **Cash base salary.** Cash base salaries reflect the go-forward rate for the employee effective as of November 1, 2009. Compensation paid in the form of cash base salary prior to that date in accordance with the terms of employment as of June 14, 2009 shall be permitted unless otherwise noted. 31 C.F.R. § 30.16(a)(3)(iii).
- **Stock salary.** Rates of stock salary grants reflect full-year values. Because this is a new compensation element, the amounts are payable on a *nunc pro tunc* basis effective January 1, 2009. Stock salary must be determined as a dollar amount through the date salary is earned, be accrued at the same time or times as the salary would otherwise be paid in cash, and vest immediately upon grant, with the number of shares or units based on the fair market value of a share on the date of award. Stock granted as stock salary may only be redeemed in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if TARP obligations are repaid.
- **Long-term restricted stock.** Long-term restricted stock may be granted upon the achievement of specified, objective performance criteria that have been developed and reviewed in consultation with the Office of the Special Master and certified by the Compensation and Benefits Committee of the Company's Board of Directors. Any such stock may vest only if the employee remains employed by the Company on the third anniversary of grant (or, if earlier, upon death or disability). The stock shall be transferable only in 25% increments for each 25% of TARP obligations repaid by the Company.
- **Other compensation and perquisites.** No more than \$25,000 in total other compensation and perquisites may be provided to any Covered Employee, absent exceptional circumstances for good cause shown, as defined by pertinent SEC regulations.
- **Supplemental executive retirement plans and non-qualified deferred compensation plans.** Following the date of the Determination Memorandum, no additional amounts may be accrued under supplemental executive retirement plans, and no Company contributions may be made to other "non-qualified deferred compensation" plans, as defined by pertinent SEC regulations.
- **Qualified Plans.** For the avoidance of doubt, the Special Master has determined that participation by the Covered Employees in tax-qualified retirement, health and welfare, and similar plans is consistent with the Public Interest Standard.