DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 11, 2009

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

Re: Proposed Compensation Structures for Certain Executive Officers and Most Highly Compensated Employees ("Covered Employees 26 – 100")

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 employees who are either executive officers of General Motors Company ("GM") or one of GM's 100 most highly compensated employees, excluding those employees subject to Section 30.10 of the Interim Final Rule ("Covered Employees 26 – 100"). 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 structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii).

The compensation review for Covered Employees 26 – 100 differs from the Special Master's review of GM's "Top 25" employees, which emphasized the individual "amounts payable" to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Interim Final Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii). The Special Master has determined that, to satisfy this standard, the 2009 compensation structures for Covered Employees 26 – 100 generally must comport with the following important standards:

- The compensation structures for Covered Employees 26 – 100 must be consistent with the principles emphasized in the Special Master's previous determinations, including: pay based on individual and Company performance, long-term incentives, avoidance of "guaranteed" bonuses and retention payments, and appropriate levels of compensation compared to compensation for persons in similar positions or roles at similar entities.

- To achieve these principles, Covered Employees 26 – 100 should receive compensation in three primary components: cash salary, stock salary, and incentive compensation. The amounts and conditions of the components for each Covered Employee will be

determined by the Company's compensation committee, subject to the structural rules described herein and set forth in detail in the attached Determination Memorandum.

- **Total compensation** must emphasize long-term performance. At least 50% of a Covered Employee's total compensation — whatever the mix of components for that individual — must not be transferable for at least three years, except in exceptional cases for good cause shown. The objective is to promote long-term performance. In addition, the total amount of cash included in any individual compensation package may not exceed 50% of total compensation, except in exceptional cases for good cause shown.

  - **Cash salary** should not exceed $500,000 per year, except in exceptional cases for good cause shown, as certified by the Executive Compensation Committee of GM's Board of Directors ("GM's Compensation Committee"), which is comprised solely of independent directors.

  - **Stock salary** will immediately vest, but will not be transferable until at least one year after it is earned.

  - **Incentive compensation** may be granted if—and only if—the Covered Employee achieves objective performance metrics determined by GM's Compensation Committee), which is comprised solely of independent directors, in consultation with the Office of the Special Master. Incentive compensation may be delivered in a mix of cash and stock, but must be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.

- The total value of all incentive compensation granted to Covered Employees 26 – 100 will be determined by GM's Compensation Committee in consultation with the Special Master.

- If GM reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010 and therefore subject to "bonus" restrictions under the Emergency Economic Stabilization Act of 2008, as amended, and the Interim Final Rule, the compensation structure for that employee will be subject to additional terms and conditions described in the Determination Memorandum to assure compliance with pertinent statutory and regulatory requirements.

- Cash guarantees payable pursuant to previously existing agreements should be restructured to be consistent with the principles above.

- The restrictions described in the Special Master's "Top 25" determinations pertaining to perquisites, severance benefits and supplemental executive retirement plans shall be extended to Covered Employees 26 – 100.

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)(ii), GM must adopt policies applicable to Covered Employees 26 – 100 as follows:

- The achievement of all performance objectives must be certified by GM's Compensation Committee. These performance objectives must be reviewed and approved by the Office of the Special Master.

- Each Covered Employee 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.

- Each Covered Employee will be subject to stock holding requirements established by GM's Compensation Committee in consultation with the Office of the Special Master.

- GM may not provide a tax "gross-up" of any kind to any Covered Employee.

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:

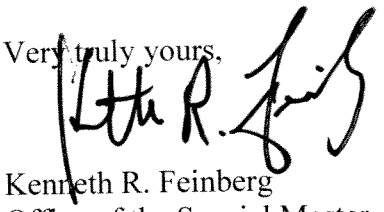
- *Performance-based compensation.* The majority of compensation payable under the approved structures depends on GM and individual performance, and ties the financial incentives of GM employees to the overall performance of the Company. The majority of the total compensation paid to employees under these structures will be redeemable over a period of not less than three years. The ultimate value realized by each Covered Employee therefore will depend on GM's performance over the long term. Guaranteed amounts payable in cash, in contrast, are rejected. *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 these approved compensation structures are competitive when compared with persons in similar positions or roles at similar entities. *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 base salaries and stock salary at sufficient levels to attract and retain employees and provide them a reasonable level of liquidity. *Id.* § 30.16(b)(1)(iii).

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 ***Annex A***. 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,



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

Attachments

cc: Ms. Mary T. Barra

ANNEX A
DETERMINATION MEMORANDUM

I. INTRODUCTION

Under the Emergency Economic Stabilization Act of 2008, as amended ("EESA") and the Department of the Treasury's Interim Final Rule on TARP Standards for Compensation and Corporate Governance (the "Rule"), the Office of the Special Master for TARP Executive Compensation (the "Office of the Special Master," or the "Office") is responsible for reviewing compensation structures for the executive officers and 100 most highly employees, excluding those employees subject to Section 30.10 of the Rule ("Covered Employees 26 – 100"), at financial institutions receiving exceptional financial assistance ("Exceptional Assistance Recipients") under the Troubled Asset Relief Program (the "TARP"). 31 C.F.R. § 30.16(a)(3)(ii). The compensation review for Covered Employees 26 – 100 differs from the Special Master's review for the "Top 25" employees, which emphasized the individual "amounts payable" to those employees, *id.* § 30.16(a)(3)(i). For Covered Employees 26 – 100, the Rule does not require individual payment determinations; instead, it requires the Special Master to determine only whether the proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." *Id.* § 30.16(a)(3)(ii).

General Motors Company ("GM" or the "Company"), one of six remaining Exceptional Assistance Recipients, has submitted to the Special Master proposed 2009 compensation structures for review pursuant to Section 30.16(a)(3)(ii) of the Rule. Covered Employees 26 – 100 comprise two business unit categories: corporate employees ("Corporate Employees") and employees of GM's asset management unit ("Promark Employees").

The Special Master has completed the review of the Company's proposed compensation structures for Covered Employees 26 – 100 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)(ii) of the Rule, with respect to Covered Employees 26 – 100.

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. Since that date, the Special Master, and Treasury employees working in the Office of the Special Master, have 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 Covered Employees 26 – 100.

The Rule requires that each Exceptional Assistance Recipient submit proposed compensation structures for Covered Employees 26 – 100. 31 C.F.R. § 30.16(a)(3)(ii). On October 5, 2009, the Office of the Special Master requested from each Exceptional Assistance Recipient, including GM, certain data and documentary information necessary to facilitate the Office of the Special Master's review of the Company's proposed compensation structures. The request required GM to submit data describing its proposed 2009 compensation structures, as well as the historical compensation structures for Covered Employees 26 – 100.

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 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 October 13, 2009. Following a preliminary review of the submission, and the provision by GM of certain additional information requested by the Office of the Special Master, on October 30, 2009, the Special Master determined that GM's submission was substantially complete for purposes of the Rule. *Id.* § 30.16(a)(3)(ii). The Office of the Special Master then commenced a formal review of GM's proposed compensation structures for Covered Employees 26 – 100. The Rule provides that the Special Master is required to issue a compensation determination within 60 days of a substantially complete submission. *Id.*

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 executive compensation and corporate governance;

- 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. Trefftzs 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 III below, when evaluating the Company's proposed compensation structures for Covered Employees 26 – 100 for 2009.

III. STATUTORY AND REGULATORY STANDARDS

The Rule requires that the Special Master determine for each of the Covered Employees 26 – 100 whether GM's proposed compensation structures "will or may result in payments that are inconsistent with the purposes of Section 111 of EESA or TARP, or are otherwise contrary to the public interest." 31 C.F.R. § 30.16(a)(3)(ii) (as applied to Covered Employees of Exceptional Assistance Recipients, the "Public Interest Standard"). The Rule requires that the Special Master consider six principles when making these compensation determinations:

(1) *Risk.* The compensation structure should avoid incentives that encourage 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, and 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 granted. *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 structures should be consistent with, and not excessive taking into account, compensation structures 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 structures 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.*

In addition, 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.*

The Rule also provides an exemption where a Covered Employee's annual compensation does not exceed $500,000 (excluding "long-term restricted stock," as that term is defined in the Rule). Compensation structures that fit within this exemption are automatically deemed to meet the requirements of the Rule, and GM is not required to seek the prior approval of the Special Master to implement these structures. 31 C.F.R. § 30.16(a)(3)(ii).

IV. COMPENSATION STRUCTURES

A. GM Proposals

GM provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for Covered Employees 26 – 100 (the "Proposed Structures"). GM's proposal 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 than Promark Employees, who manage GM and third-party pension trust fund and other assets.

Under the Proposed Structures, Corporate Employees generally would receive a combination of cash salary and long-term incentive compensation payable in the form of "long-term restricted stock," as that term is defined in the Rule. Long-term incentive compensation

would be provided based on the 2009 performance of the employee. Corporate Employees who are members of GM's Senior Leadership Group (the Company's senior management team) also would receive stock salary.

Promark Employees instead would receive a combination of cash salary, short-term cash bonuses and long-term cash bonuses. Bonuses—both short-term and long-term—would be determined by the absolute return on assets under Promark's management. Under the Proposed Structures, Promark Employees would receive no compensation in the form of stock or stock units.

B. Determinations of the Special Master

The Special Master reviewed the Proposed Structures in detail by application of the principles set forth in the Rule and described in Part III above. In light of this review, the Special Master has determined that the Proposed Structures are largely consistent with the Public Interest Standard; however, certain aspects of the Proposed Structures require modification.

The Special Master has determined that the compensation structures described in this Part IV.B will not, by virtue of their structural design, result in payments inconsistent with the Public Interest Standard. These compensation structures are described in further detail in ***Exhibits I*** and ***II.***

1. Total Compensation

The Special Master reviewed GM's Proposed Structures in light of the principle that an "appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). In general, the Special Master has concluded that compensation transferable no earlier than three years following the date it is earned provides employees with incentives to maximize the long-term value of the Company. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100, whether in the form of cash or stock, must provide at least 50% of total compensation in the form of compensation that is not transferable for at least three years following the date it is earned, other than in exceptional cases for good cause shown.

The Special Master also reviewed the Proposed Structures in light of the principle that "a significant portion of the overall compensation should be long-term compensation that aligns the interest of the employee with the interests of shareholders and taxpayers." *Id.* § 30.16(b)(1)(iii). In general, compensation payable in the form of cash does not align employees' incentives with the interests of shareholders and taxpayers as effectively as compensation payable in the form of Company stock. Accordingly, the Special Master has concluded that, in order to be consistent with the Public Interest Standard, the total amount of cash included in the compensation structure for any Covered Employee should not exceed 50% of total compensation, other than in exceptional cases for good cause shown. The remaining percentage of total compensation must be payable in the form of Company stock.

a. Cash Salary

The Special Master reviewed GM's proposed cash salaries in light of the principle that compensation structures should generally be consistent with compensation structures "for persons in similar positions or roles at similar entities that are similarly situated, including entities competing in the same markets." 31 C.F.R. § 30.16(b)(1)(v). The Special Master has determined that, to be consistent with the Public Interest Standard, compensation structures for Covered Employees 26 – 100 may not provide for cash salaries in excess of $500,000, other than in exceptional circumstances for good cause shown. Any such exceptions must be individually certified to the Office of the Special Master by the Executive Compensation Committee of the Company's Board of Directors ("GM's Compensation Committee").

b. Stock Salary

The Special Master reviewed the Proposed Structures in light of the principle that compensation structures should "appropriately allocate the components of compensation such as salary . . . as well as the extent to which compensation is provided in cash, equity, or other types of compensation," *id.* § 30.16(b)(1)(iii). With the exception of Promark Employees, the Proposed Structures provide for payment of base salary in the form of cash and stock. The Special Master has concluded that, to be consistent with the Public Interest Standard, compensation structures generally should permit the payment of base compensation in the form of vested stock salary which facilitates an appropriate allocation of fixed, annual compensation to stock, other than in exceptional cases for good cause shown

The Special Master also reviewed the Proposed Structures in light of the principle that compensation structures should provide compensation that is "performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that, to provide compensation that is performance-based over a relevant period, stock salary may not be transferred or otherwise redeemed prior to the first anniversary of the date such stock salary is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes.

c. Incentive Compensation

The Special Master reviewed GM's proposed incentive compensation for Covered Employees 26 – 100 in light of the principle that compensation structures should provide performance-based compensation based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met," *id.* § 30.16(b)(1)(iv). In general, incentive compensation should not be granted unless the achievement of performance metrics is reviewed and certified on an independent basis. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must provide that no incentive compensation may be granted to a Covered Employee unless the employee achieves objective performance metrics developed by appropriate GM officials and reviewed and approved by GM's Compensation Committee (which is composed solely of independent directors) in consultation with the Office of the Special Master. As described below, incentive compensation may be delivered in a mix of cash and stock, but must

be payable over time and subject to "clawback" if the performance assessment resulting in the compensation is later discovered to be inaccurate.

i. Cash Incentives

The Special Master reviewed GM's proposed incentive compensation in light of the principle that compensation structures should provide performance-based compensation based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." Id. § 30.16(b)(iv). In general, the Special Master has concluded that cash incentives should be deferred over a period of time designed to ensure that the performance metrics giving rise to the payment accurately measured performance. Accordingly, the Special Master has concluded that, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 generally must provide that at least 50% of incentive compensation granted after the date of this Determination Memorandum and paid in cash be deferred for at least one year after the grant date, other than in exceptional cases for good cause shown, in order to assure compliance with the performance metrics upon which the compensation was based.

ii. Stock Incentives

The Special Master reviewed GM's proposed incentive compensation 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 principle that compensation structures should ensure that "an appropriate portion of the compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). The Special Master has concluded that a significant amount of the compensation paid as incentive compensation should reflect the Company's performance over the long term. Accordingly, to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 generally must provide that at least 50% of incentive compensation be paid in the form of stock or stock equivalents that cannot be transferred until at least three years from the date of grant and cannot be transferred until at least one year following vesting, other than in exceptional cases for good cause shown and except for stock or stock equivalents withheld or transferred immediately upon vesting to enable the employee to pay taxes. The remaining 50% of incentive compensation may be paid in a form, and at a time, determined by GM's Compensation Committee, subject to the principles set forth in Part IV.B. of this Determination Memorandum.

iii. Total Incentives

Finally, the Special Master reviewed GM's proposed incentive compensation in light of the principle that compensation structures "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." *Id.* § 30.16(b)(1)(v). The Special Master has determined that safeguards with respect to the aggregate amount of incentive compensation payable to Covered Employees 26 – 100 are necessary to ensure that compensation structures for Covered Employees 26 – 100 are generally comparable to those for persons in similar positions or roles at similar entities. Accordingly, the Special Master has determined that, in order to be consistent with the Public Interest Standard, the total value of all incentive compensation granted

to Covered Employees must be determined by GM's Compensation Committee in consultation with the Special Master.

2. Covered Employees Entering the "Top 25"

If a Covered Employee becomes a "Top 25" employee in 2010, several complications arise with respect to that Covered Employee's compensation structure. In particular, Section 111 of EESA, and Section 30.10 of the Rule, impose restrictions on the accrual or payment of cash "bonuses" in 2010 for any Covered Employee who becomes a "Top 25" employee in 2010, even if the compensation relates to performance prior to the employee joining the "Top 25." The Special Master has considered these issues and has determined that, if GM reasonably expects that a Covered Employee may become one of the "Top 25" employees in 2010, the compensation structure for that Covered Employee will be subject to the following additional terms and conditions to assure compliance with pertinent statutory and regulatory requirements.

First, in accordance with the Special Master's October 22, 2009 determinations for the "Top 25," additional stock salary may be granted to the Covered Employee on a *nunc pro tunc* basis, provided that the stock or stock units vest immediately and are only redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if federal obligations are repaid (except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Second, any incentive compensation for performance in 2009 that would be payable to the Covered Employee in cash in the first quarter of 2010 (consistent with the principles set forth in Part IV.B.1.c.i.) may be paid on or before December 31, 2009.

Third, notwithstanding the other requirements of this Part IV.B., any incentive compensation paid to the Covered Employee may be paid in the form of GM stock (but not stock units) that vests on or before December 31, 2009, provided that the transferability of such stock shall be consistent with the structural principles set forth in Part IV.B (except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes).

Fourth, notwithstanding the other requirements of this Part IV.B., up to one-third of the Covered Employee's "annual compensation" may be paid in the form of "long-term restricted stock," as those terms are defined in the Rule.

3. Exemption for Annual Compensation Under $500,000

According to GM's submission, the Proposed Structures may result in payments to one or more Covered Employees that result in annual compensation (other than long-term restricted stock) totaling $500,000 or less. If the Proposed Structure for a Covered Employee satisfies the exemption set forth in Section 30.16(a)(3)(ii) of the Rule and described in Part III above, then the structure is automatically deemed to meet the requirements of the Rule, and GM is not required to seek the prior approval of the Special Master to implement the structure.

4. "Other" Compensation and Perquisites

GM's proposals provide for limited payments of "other" compensation, as well as perquisites, to Covered Employees 26 – 100. The Special Master has concluded that, absent special justification, employees—not the Company—generally should be responsible for paying personal expenses, and that a significant portion of the compensation structures should not be allocated to such perquisites and "other" compensation. *See id.* §30.16(b)(1)(iii).

Accordingly, to be consistent with the Public Interest Standard, the compensation structure for each Covered Employee generally must provide no more than $25,000 in "other" compensation and perquisites. 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.[1]

5. Severance Plans

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)(i)(iv), and that payments should be appropriately allocated among the elements of compensation, id. § 30.16(b)(1)(iii). Accordingly, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must ensure that 2009 compensation structures do not result in an increase in the amounts payable pursuant to these arrangements.

6. Supplemental Executive Retirement Plans and Non-Qualified Deferred Compensation

GM also proposed that certain Covered Employees receive limited 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,

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[1] GM has identified Covered Employees subject to expatriate arrangements providing for the payment of certain "other" compensation in excess of this limitation. The Special Master has reviewed these arrangements and concluded that such payments, not to exceed $350,000 per employee, are consistent with the Public Interest Standard, and that such payments may be disregarded for purposes of determining whether a Covered Employee's compensation structure meets the requirements of the Public Interest Standard as set forth in this Part IV.B.

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 employee upon leaving the Company.

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, in order to be consistent with the Public Interest Standard, the compensation structures for Covered Employees 26 – 100 must not provide for further 2009 accruals under supplemental retirement plans or Company credits to other "non-qualified deferred compensation" plans (with the exception of employee-funded elective deferrals) following the date of this Determination Memorandum.

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 Covered Employees 26 – 100, 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), incentive compensation may not be granted unless GM's Compensation Committee determines to grant such compensation in light of the employee's performance as measured against objective performance criteria that the Committee has developed and reviewed in consultation with the Office of the Special Master. This evaluation must be disclosed to shareholders in, and certified by the Committee as part of, GM's securities filings. In addition, the Committee must retain discretion with respect to each employee to reduce (but not to increase) the amount of any incentive compensation on the basis of its overall evaluation of the employee's or GM's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part IV above, the structures determined by the Special Master to be consistent with the Public Interest Standard, include grants of stock or stock units in GM. 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)(1)(iii). Accordingly, the Company must have in effect a policy that would prohibit a Covered 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 Part IV above. Such transactions would be contrary to the principles set forth in the Rule.

Finally, because the compensation structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock or stock units in GM, it is particularly important that stock acquired pursuant to these grants provide "compensation [that is] performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Accordingly, the Company must ensure that each Covered Employee is subject to holding requirements set forth in stock ownership commitment rules to be adopted by GM's Compensation Committee in consultation with the Office of the Special Master.

B. <u>Additional Requirements</u>

In addition to the requirements set forth above, in light of the requirements of the Rule, GM is required to institute the following corporate governance reforms:

(1) *Compensation Committee; Risk Review.* Under the Rule, 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 Rule requires that 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) employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (2) employee compensation plans that could encourage the manipulation of GM's reported earnings to enhance the compensation of any of the employees. 31 C.F.R. § 30.4; *id.* § 30.5.

(2) *Disclosure with Respect to Compensation Consultants.* The Rule requires that the compensation committee 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 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) *Clawback.* The Rule requires that any bonus payment made to a senior executive officer or one of the next twenty most highly compensated employees of GM be subject to a provision for recovery or "clawback." *Id.* § 30.8. The Special Master has determined that this important requirement should also apply to each of GM's Covered Employees. Accordingly, any incentive compensation must be subject to forfeiture if the compensation granted is later determined to be 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 compensation was earned.

(4) *Prohibition on Tax Gross-Ups.* The Rule prohibits GM from providing (formally or informally) a tax "gross-up," as defined in the Rule, to any senior executive officer or most highly compensated employee. *Id.* § 30.11(d). The Special Master has determined that this important requirement should also apply to each of GM's Covered Employees.

Accordingly, GM must not provide (formally or informally) a tax "gross-up," as defined in the Rule, to any Covered Employee following the date of this Determination Memorandum.

VI. CONCLUSION

The Special Master has reviewed GM's Proposed Structures 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.

Part IV.B sets forth structures that the Special Master has concluded comport with the Rule's principles. Pursuant to the authority vested in the Special Master by the Rule, and in accordance with Section 30.16(a)(3)(ii) thereof, the Special Master hereby determines that the compensation structures set forth in Part IV.B, 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 TARP, and will not otherwise be contrary to the public interest.

Pursuant to the 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. *Id.* § 30.16(c)(1).

The foregoing determinations are limited to the compensation structures described in Part IV.B, 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)(ii) 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 the Company to the Office of the Special Master, and the absence of any material misstatement or omission in such materials.

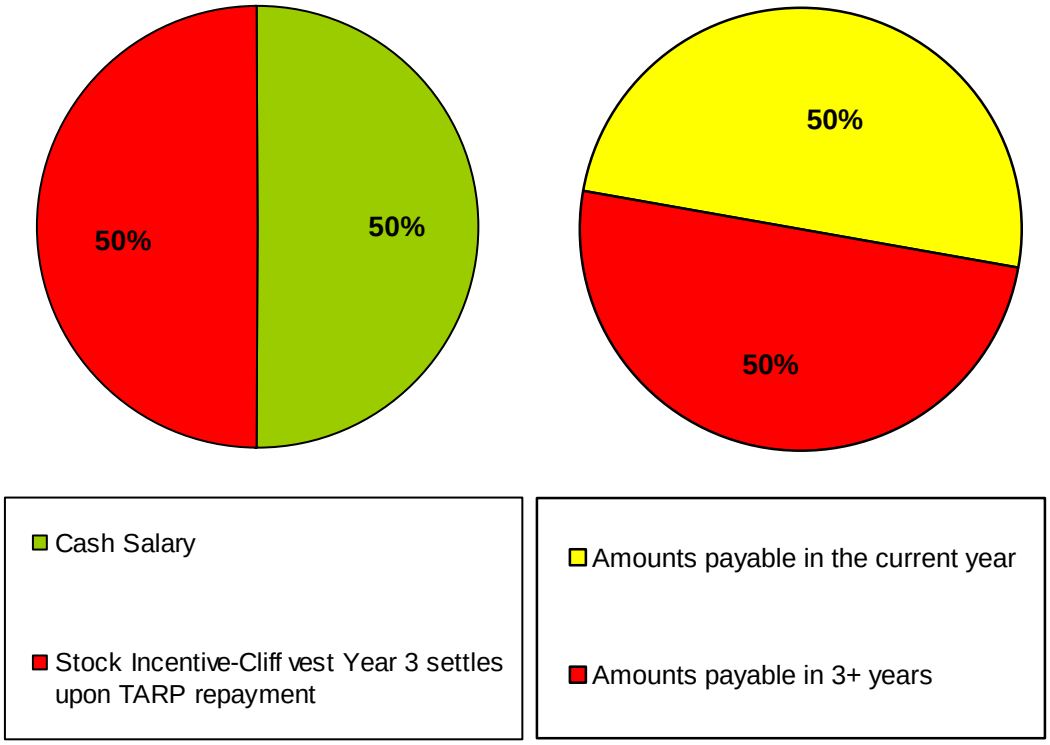
Finally, the foregoing determinations are limited to the compensation structures described herein, and no further compensation of any kind payable to any Covered Employee without the prior approval of the Special Master would be consistent with the Public Interest Standard.

Exhibit I-A
<u>SAMPLE</u> COMPENSATION STRUCTURE
FOR GM CORPORATE EMPLOYEE
CONSISTENT WITH THE PUBLIC INTERST STANDARD

Example: GM Corporate Employee with a total compensation package of $**700,000**.

- ***Base salary.***
    - **Cash**: The Covered Employee receives a total of $**350,000** in cash salary.
- ***Incentive Compensation***. The Covered Employee may also receive $**350,000** in incentive compensation as follows:
    - **Stock Incentive**: $**350,000**
        - The entire amount may not be sold or transferred prior to the third anniversary of the grant date.
- ***Total compensation***. The Covered Employee's total compensation is $**700,000**, with 50% of the total delivered in cash and 50% delivered in stock (50% delivered short term and 50% delivered long term).

Breakdown of Total Direct Compensation



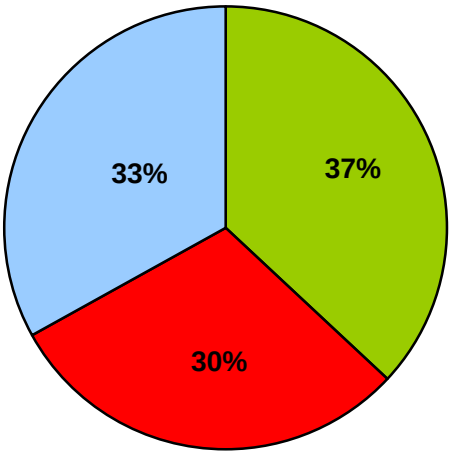
Short Term vs. Long Term

Exhibit I-B
<u>SAMPLE</u> COMPENSATION STRUCTURE
FOR GM SENIOR LEADERSHIP GROUP MEMBER
CONSISTENT WITH THE PUBLIC INTEREST STANDARD

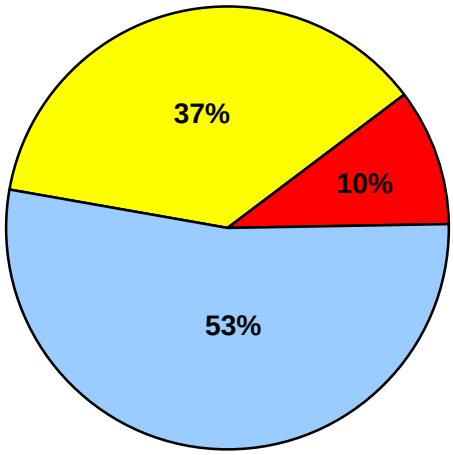
Example: GM Corporate Employee who is a member of the Company's Senior Leadership Group with a total compensation package of $**1,350,000**.

- ***Base salary.***
    - **Cash**: The Covered Employee receives a total of $**500,000** in cash salary.
    - **Stock Salary**: The Covered Employee receives $**400,000** in stock salary, which vests immediately and becomes transferable on the second, third and fourth anniversary of the date it is earned.
- ***Incentive Compensation***. The Covered Employee may also receive $**450,000** in incentive compensation as follows:
    - **Stock incentive**: $**450,000**
        - The entire amount vests three years from the grant date and is transferable in 25% installments as the TARP obligation is repaid.
- ***Total compensation***. Covered Employee's total compensation is $**1,350,000**, with 37% of the total delivered in cash and 63% delivered in stock (47% delivered short term and 53% delivered long term).

Breakdown of Total Direct Compensation



Short Term vs. Long Term



- Cash Salary
- Stock Salary - settles ratably in Years 2-3-4
- Annual Incentive Equity-Cliff vest Year 3, settles upon TARP repayment

- Amounts payable in the current year
- Amounts payable in the 2nd year
- Amounts payable in 3+ years

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

The following general terms and conditions shall govern the compensation structures described in Part IV.B. of the Determination Memorandum. The Special Master's determination that those structures are consistent with the Public Interest Standard is qualified in its entirety by the Company's adherence to these terms and conditions.

- ***Stock salary***. Because this is a new compensation element, stock salary may be granted 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 based on the fair market value on the date of grant. Unless otherwise provided in the Determination Memorandum, stock granted as stock salary may not be redeemable during the one-year period immediately following the date it is earned, except for stock withheld or transferred immediately upon vesting to enable the employee to pay taxes. Whether a *nunc pro tunc* grant or payment that is labeled stock salary is considered salary or a bonus for purposes of the Rule is determined based on all the facts and circumstances.

- ***Allocation of compensation***. For compensation delivered in annual installments over a period of years, each installment will be considered separately in determining when compensation vests or becomes transferable for purposes of the Determination Memorandum.

- ***Prior compensation***. In accordance with the Rule, unless otherwise noted, compensation paid to Covered Employees during the period from June 15, 2009 to the date of the Determination Memorandum will be treated as complying with the Rule, provided that such compensation was paid under a compensation structure established by the Company as of June 14, 2009, and provided further that the Company promptly complies with the modifications set forth in the Determination Memorandum. 31 C.F.R. § 30.16(a)(3)(iii).

- ***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 (with the exception of employee-funded elective deferrals) 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 Covered Employees 26 – 100 in tax-qualified retirement plans, broad-

based employee health and welfare plans, and similar plans is consistent with the Public Interest Standard.