

Session 13: The Government as Governance Reformer

Readings:

- Testimony of Kenneth R. Feinberg, Special Master for TARP Executive Compensation, Committee on Oversight and Government Reform, U.S. House of Representatives, October 28, 2009.
- Report of The Special Master for TARP Executive Compensation, Approval Letter to American International Group, Inc., October 22, 2009.
- Report of The Special Master for TARP Executive Compensation, Approval Letter to Citigroup, Inc., October 22, 2009.
- Report of The Special Master for TARP Executive Compensation, Approval Letter to General Motors Company, October 22, 2009.

Note: This session will take place on Monday, November 9. Kenneth Feinberg, the Special Master for TARP Executive Compensation will participate in the session. Submitted memos should include two comments, one comment on the readings and one comment on his presentation. The memo is due at noon on Monday, November 16.

TESTIMONY OF
KENNETH R. FEINBERG

Special Master for TARP Executive Compensation
House Committee on Oversight and Government Reform

October 28, 2009

Mr. Chairman:

I thank you and the Committee for the opportunity to testify today. The subject of executive compensation continues to be a top priority of the American people and the international business community, so I welcome your invitation and look forward to participating in this hearing.

As you know, in June of this year, I was asked to serve as Special Master for TARP Executive Compensation by the Secretary of the Treasury. In that capacity, I have a number of responsibilities under the relevant statutory¹ and regulatory² authority. These responsibilities include interpreting the regulations, and evaluating and making determinations regarding compensation payments to, and compensation structures for, certain employees of TARP recipients receiving exceptional financial assistance.

In these capacities, I have spent the past five months carefully considering the terms and conditions of the 2009 executive compensation for senior executives at those seven corporations that received exceptional financial assistance from the federal government: AIG, Bank of America, Citigroup, Chrysler, Chrysler Financial, General Motors and GMAC. These executives include five “senior executive officers” and the twenty “most highly compensated employees.” My mandatory jurisdiction under the regulations is limited to the senior executives at these seven companies and only these seven companies. Although I do have interpretive authority under the Standards, and advisory authority under the law to make recommendations and nonbinding

¹ See Section 111 of the Emergency Economic Stabilization Act of 2008, *as amended by* the American Recovery and Reinvestment Act of 2009.

² See TARP Standards for Compensation and Corporate Governance, 31 C.F.R. § 30.1 *et seq.*

determinations as to officials of other companies who received TARP financial assistance, I have no legal authority to make final determinations pertaining to executive compensation for any companies other than these seven.

Mr. Chairman, I refer you and the Members of the Committee to the Report of the Special Master for TARP Executive Compensation: 2009 Executive Compensation Determinations for the TARP Exceptional Assistance Recipients, dated October 22, 2009, a copy of which is included with my prepared testimony. This Report includes my compensation determinations concerning senior executives at each of the seven companies referenced above, and provides a comprehensive explanation and analysis of the reasoning which underlies such determinations. I welcome any inquiries you may have concerning my Report.

In your letter of October 15, 2009, inviting me to testify, you raised three questions for me to focus on during my appearance here today. I treat these questions in the order you presented them in your letter.

I. What standards and considerations are you using to evaluate employee compensation at the seven companies that submitted such plans for review?

I was guided by the rules and principles in the statute and the Treasury regulations in evaluating employee compensation at the seven companies. For example, the Treasury regulations expressly make clear that I must consider competitive market forces in determining compensation levels that will permit the seven companies to remain in business, to thrive financially, and to eventually repay the taxpayers for TARP financial assistance. These companies must be able to attract sufficient talent to prosper. At the same time, however, the law requires me to take into account whether the terms and conditions of compensation are performance-based and tie compensation to the companies' prospective performance and financial success. In addition, the regulations make clear that my compensation determinations should be made in such a way that considers whether senior executives are provided incentives to avoid taking excessive risks to receive greater amounts of compensation. The law also anticipates that a portion of compensation be tied to the repayment of TARP financial assistance, and requires

companies to “claw back” incentive compensation that is based upon inaccurate financial statements or performance metrics.

In sum, the standards and considerations I used in evaluating employee compensation at the seven companies can be found in the statute and the accompanying Treasury regulations: in these laws, Congress and the Treasury provided me the guidance needed to make my final determinations. Based on this guidance, I determined that a new compensation regimen should be implemented at these seven companies: guaranteed compensation is to be replaced by performance-based compensation designed to tie individual executives’ financial opportunities to the long term overall financial success of each company. Short-term profits must give way to longer-term financial stability and success.

II. What specific proposals have been received from the seven companies and what specific actions have you taken with respect to those proposals?

Mr. Chairman, I refer you and the Members of the Committee to my Report (attached) which details the individual submissions made by each of the seven companies, and also describes in comprehensive fashion my response to each of these submissions. The general conclusions I reached after careful evaluation and analysis of the submissions were the same for six of the seven companies—I concluded, pursuant to the statute and the Treasury regulations, that each submission would result in payments contrary to the “Public Interest Standard,” and should, therefore, be rejected. The “Public Interest Standard” is the term I used in my Report to describe the regulatory standards that I am required to apply in making determinations. Instead, as my Report spells out, I made important revisions to the submissions as a precondition to approving compensation structures and payments for each individual covered executive at these six TARP recipients. (Chrysler Financial has unique circumstances, and I determined that its proposal was appropriate in light of them.)

I can summarize the flaws in the six individual company submissions as follows:

1. The companies requested excessive guaranteed cash – salaries and bonuses – for company executives;
2. The companies requested that stock issued to these executives be either immediately redeemable or redeemable without a sufficient waiting period;
3. Many of the companies did not sufficiently tie compensation to performance-based benchmarks and metrics;
4. Many of the companies did not sufficiently limit or restrict financial “perks,” such as private airplane transportation, country club dues, golf outings, etc., and in some cases provided excessive levels of severance and executive retirement benefits;
5. The companies did not make sufficient effort to fold guaranteed compensation contracts – entered into prior to the enactment of the current compensation regulations – into 2009 performance-based compensation.

In modifying these six submissions in order to satisfy the “Public Interest Standard,” I made important changes designed to tie compensation to prospective company performance:

1. I greatly reduced the amount of 2009 guaranteed cash compensation made available to senior executives. On the whole, cash (which, in the past, included cash base salaries and cash bonuses) was reduced by approximately 90%. Overall total compensation was reduced by approximately 50%.
2. In place of cash, I substituted “stock salary” which, in accordance with Treasury regulations, vests immediately upon issuance but may only be

redeemed in three equal, annual installments beginning in 2011, with each installment redeemable one year early if TARP obligations are repaid. The objectives are clear – to tie individual compensation to longer-term performance metrics, and to encourage senior executives to remain at the company for a period of years to maximize their personal benefit from the overall profitability of the company itself. The value of “stock salary” will depend on the companies’ financial success in coming years. At the same time, I also permitted incentive payments of “long-term restricted stock.” This long-term incentive stock vests only if executives remain employed for three years after grant, and it can be cashed in only in 25% increments for each 25% of TARP obligations repaid by their employer. Again, the goal is to tie individual compensation to the overall financial success of the company.

3. By implementing the ideas of “stock salary” and “long-term restricted stock,” only redeemable after multiple years of company performance, I tied individual compensation to long-term company success.
4. I reined in “perks” by expressly requiring that any such perks beyond \$25,000 per individual must first receive the approval of the Office of the Special Master. No longer will senior executives be entitled to excessive use of private planes and other compensation-related financial benefits. I also prohibited additional company contributions to executive retirement programs.
5. I succeeded in almost all cases in getting the companies to agree to restructure guaranteed contracts and other forms of guaranteed compensation into prospective, performance-based compensation packages. These companies agreed, in almost all cases, to transfer guaranteed forms of compensation – entered into with company officials before the enactment of current legal requirements – into “stock salary.” I am very reluctant to even attempt to invalidate the sanctity of contracts

entered into well before enactment of the current law; however, I did work closely with the companies in an attempt, cooperatively, to restructure these “grandfathered” financial guarantees by making them part of my 2009 final compensation determinations.

Mr. Chairman, I refer you and the Members of the Committee, to my Report which spells out in further detail how we modify company submissions to comply with the “Public Interest Standard.”

III. What recommendations do you have for oversight of TARP recipient employee compensation schemes in the future?

The Treasury regulations speak quite clearly to this question.

First, the Standards require that the Office of the Special Master now turn its attention to reviewing compensation structures for the remaining executive officers, and 75 next most highly compensated employees, in each of the seven companies. The regulations do not require the Special Master to make individual compensation determinations for these individuals; instead, the regulations require that the Special Master approve the compensation structure for these individuals. The law affords me 60 days to do this from the time that I deem the company submissions with respect to these individuals “substantially complete.” I have received all of these pertinent submissions from each of the seven companies but have not yet concluded that they are “substantially complete,” thereby triggering the 60-day limitation.

Second, the Office of the Special Master must soon turn its attention to the process for determining the 2010 compensation for the senior executives at each of the seven TARP exceptional assistance companies. I believe we have made important progress in this regard as a result of completed efforts at 2009 compensation. Nevertheless, there will undoubtedly be new compensation issues which will confront us in 2010. (For example, we anticipate dealing once again with claims of “grandfathered” retention contracts and other guaranteed forms of compensation which will have to be considered by the Special Master as part of 2010 submissions for the senior executives; in addition, it is anticipated that the list of senior executives for each Company will undergo

some modification, requiring a new evaluation of certain individual compensation packages submitted by each company.)

Finally, I do not recommend that my responsibilities related to compensation determinations for senior executives, as currently defined by Treasury regulations, be expanded beyond the current seven companies receiving exceptional TARP financial assistance. I believe Congress and the Treasury have already spoken with respect to the compensation restrictions that apply beyond this group of firms. My limited mandatory jurisdiction involving just these seven companies is justified by the fact that the American taxpayers have a vested interest as particularly significant stakeholders in these seven companies. But, the federal government should not enter the business of micromanaging compensation practices beyond these seven companies by expanding my jurisdiction or broadening my discretionary authority. Hopefully, the individual final compensation determinations I make may yet be used, in whole or in part, by other companies in modifying their individual compensation practices. I believe the final compensation determinations I make and discuss in my Report are a useful model to guide others in the private marketplace. But that is where my authority should end. I do not believe it necessary or wise to broaden my jurisdiction or make my legal authority more pervasive.

Mr. Chairman, this concludes my formal written statement, and I welcome any questions from you and the Members of this distinguished Committee.

Thank you.

**REPORT
OF
THE SPECIAL MASTER
FOR TARP EXECUTIVE COMPENSATION**

**DETERMINATION DECISIONS
FOR THE
SEVEN EXCEPTIONAL ASSISTANCE TARP RECIPIENTS**

October 22, 2009

**Special Master for Executive Compensation
2009 Executive Compensation Decisions
for the TARP Exceptional Assistance Companies**

- 1. American International Group, Inc.**
- 2. Bank of America, Corp.**
- 3. Chrysler Group, LLC**
- 4. Chrysler Financial**
- 5. Citigroup, Inc.**
- 6. General Motors Company**
- 7. General Motors Acceptance Corporation Financial Services**

1. American International Group, Inc.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Robert Benmosche
President and Chief Executive Officer
American International Group, Inc.
70 Pine Street
27th Floor
New York, NY 10270

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

Dear Mr. Benmosche:

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 most highly compensated employees of American International Group, Inc. ("AIG"). 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).

Pursuant to the Interim Final Rule, the Special Master is required 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 AIG's senior executive officers and most highly compensated employees generally must comport with the following important standards:

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown. Such good cause will not exist in any case in which the employee is to be paid a substantial cash amount pursuant to a previously existing agreement between AIG and the employee. Overall, cash compensation must be significantly reduced from cash amounts paid in 2008. In AIG's case, cash compensation for these employees will decrease 91% from 2008 levels.
- Rather than cash, the majority of each individual's base salary will be paid in the form of stock units reflecting the value of a "basket" of four AIG insurance

subsidiaries that the Company, the Federal Reserve Bank of New York, and the Department of the Treasury have identified as critical to the future of the company. These units 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 the date they are earned, with each installment redeemable one year early if AIG repays its TARP obligations. This structure encourages employees to remain employed by AIG and to maximize the value of the businesses most important to its long-term stability while avoiding incentives for unnecessary risk-taking. Other terms and conditions of these stock units, including any alterations to the structure of the “basket” to maintain appropriate incentives for employees, will be determined by the AIG, subject to the Special Master’s approval.

- Total compensation for each individual must be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities. Overall, total compensation must be significantly reduced from the amounts paid in 2008. In AIG’s case, total compensation for these employees will decrease 58% 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. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with AIG for at least three years following grant, and may only be redeemed in 25% installments for each 25% of AIG’s TARP obligations that are repaid. Such long-term incentive awards may not exceed one third of total annual compensation.
- Employees of AIG Financial Products will receive only cash base salaries through the balance of 2009. Employees who pledged to return amounts paid pursuant to previously existing retention awards must immediately repay the pledged amount.
- Any and all incentive compensation will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, 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 to the satisfaction of the Special Master).
- 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), AIG must adopt policies applicable to these executive officers and employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Management Resources Committee of AIG’s Board of Directors, which is composed solely of independent directors, as part of AIG’s securities filings. 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 their compensation structures.
- AIG may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Compensation and Management Resources Committee 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 AIG’s value.

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

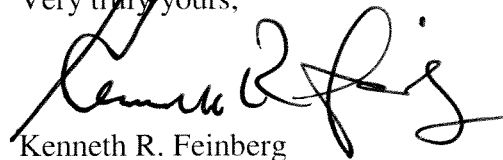
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to AIG’s compensation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

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on AIG’s performance, and ties the financial incentives of AIG 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 units reflecting the value of four subsidiaries critical to AIG’s long-term stability; and, because the stock will only be redeemable in equal, one-third installments beginning on the second anniversary of the date the stock salary is earned (in each case subject to acceleration by one year if AIG repays its TARP obligations), the ultimate value realized by the employee will depend on AIG’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).

- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for AIG 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 those provided to persons in similar positions or roles at similar entities. *Id.* § 30.16(b)(1)(ii).
- *Appropriate allocation.* The total compensation payable to AIG employees is weighted heavily towards long-term structures that are tied to AIG's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to AIG 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, AIG may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If AIG 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
TARP Executive Compensation

Attachment

cc: Anastasia D. Kelly, Esquire
Marc R. Trevino, Esquire

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.*

American International Group, Inc. (“AIG,” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures 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 nine 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 Special Master has completed the review of the Company’s proposed compensation structures pursuant to the principles set forth in the Rule. 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 Treasury employees working in the Office of the Special Master, conducted extensive discussions with AIG officials and Company counsel. During these discussions, the Office of the Special Master informed AIG 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 AIG 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 AIG, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required AIG to submit data describing its proposed compensation structures, and the payments that would result from the 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). AIG was required to submit competitive market data indicating how the amounts payable under AIG's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. AIG 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.

AIG submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that AIG'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 AIG's proposed compensation 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.*

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 III below, when evaluating the Company's proposed compensation 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 AIG's proposed compensation structure, 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 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, 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 amounts 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. AIG Proposals

AIG has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

AIG supported its proposal 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.

1. AIG Corporate and Operating Units

AIG has proposed compensation structures for each of three Senior Executive Officers, as well as for four Most Highly Compensated Employees, each of whom serves as an executive in AIG’s corporate offices or as a senior executive at an AIG subsidiary.¹

AIG’s proposed compensation structures for each of the seven executives in this group generally emphasized increases in cash base salary and substantial base salary paid in the form of vested AIG stock and did not include any compensation payable on the basis of individual performance.

a. Cash Salary and Cash “Retention” Awards

AIG generally proposed to increase cash base salaries for employees in this group. AIG’s submission asserted that these base salaries could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

AIG also proposed to pay “retention” awards to three of these employees, in amounts ranging from \$1,500,000 to \$2,400,000, that AIG argued were due under agreements providing for legally binding rights under valid written employment contracts, *see* 31 C.F.R. § 30.10(e)(2), and thus were not subject to the review of the Special Master.

¹ On August 16, 2008, AIG entered into a Letter Agreement with Robert H. Benmosche pursuant to which Mr. Benmosche was appointed Chief Executive Officer of AIG. The Special Master separately reviewed the Letter Agreement and determined that the compensation structure under the Letter Agreement was consistent with the Public Interest Standard. *See* Office of the Special Master, Letter to Compensation and Management Resources Committee, American International Group, Oct. 2, 2009, *available at* <http://www.financialstability.gov/docs/RobertBenmoscheDeterminationLetter.pdf>. Accordingly, Mr. Benmosche’s compensation package is not addressed in this Determination Memorandum.

b. Stock Salary

AIG proposed that employees in this group receive substantial compensation in the form of vested AIG common stock delivered on the Company's payroll schedule. AIG proposed that 50% of the stock be transferable *immediately* by the employee. AIG proposed to deliver stock salary in amounts ranging from \$250,000 to \$4,600,000 to employees in this group.

c. Annual Long-Term Incentive Awards

AIG did not propose that employees in this group be granted any compensation subject to the achievement of performance measures. Specifically, AIG's Proposed Structures did not include grants of long-term incentive awards granted in compliance with the requirements of the Rule.

d. "Other" Compensation and Perquisites

AIG's submission included payments of "other" compensation as well as perquisites to the Covered Employees. The proposed payments varied in value.

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

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

f. Severance Plans

AIG's submission to the Office of the Special Master also indicated that, in some cases, the Proposed Structures would result in increases in amounts payable to these employees pursuant to severance arrangements.

2. Covered Employees at AIG Financial Products

AIG has also proposed compensation structures for five Covered Employees employed by AIG Financial Products, a subsidiary of the Company. AIG's proposed compensation structure for each of these five employees included significant increases in cash base salary, accompanied by a promise, secured by a segregated pool of cash, to pay the employees substantial amounts based on their performance. In summary, AIG's proposed compensation structures for these employees included the following principal elements:

- Cash base salaries, delivered on a *nunc pro tunc* basis effective January 1, 2009, ranging from \$285,000 to \$950,000.
- Payments from the segregated cash pool ranging from \$1,115,000 to \$2,612,182.

- Total proposed 2009 compensation for five employees of \$13,200,000.

In addition, in the course of discussions with the Office of the Special Master, AIG acknowledged that certain employees of AIG Financial Products had pledged to repay amounts paid in early 2009 in connection with certain bonuses. AIG had further acknowledged that four of these five employees made such pledges and failed, as of the date of AIG's submission to the Office of the Special Master, to honor those pledges. The remaining Covered Employee at AIG Financial Products did not pledge to return any of the amounts received in early 2009.

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 III above. In light of this review and analysis, the Special Master has determined that both the structural design of AIG's proposals and the amounts potentially payable to Covered Employees under the proposals would be 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 AIG Corporate and Operating Units

a. Cash Salary and Cash "Retention" Awards

The Special Master reviewed AIG's proposal with respect to cash salary and "retention" awards 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," *id.* § 30.16(b)(1)(v). AIG's cash salary proposals for these employees generally exceeded the 50th percentile of amounts paid to persons in similar positions or roles at similar entities. The Special Master has concluded that, for Covered Employees at Exceptional Assistance Recipients, cash salaries generally should target the 50th percentile as compared to persons in similar positions or roles at similar entities because such levels of cash salaries balance the need to attract and retain talented employees with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients. Accordingly, the Special Master has concluded that AIG's proposed cash salaries are inconsistent with the Public Interest Standard, because the proposed amounts cannot be supported by reference to amounts payable to persons in similar positions or roles at similar entities.

The Special Master also reviewed AIG's proposed cash salaries in light of the principle that an "appropriate portion of...compensation should be performance-based over a relevant performance period." *Id.* § 30.16(b)(1)(iv). AIG proposed that cash

salaries constitute significant proportions of total compensation, although cash salaries are not performance-based. The Special Master has concluded that performance-based compensation should constitute the primary portion of these employees total compensation packages, and therefore that AIG's proposed salaries are inconsistent with the Public Interest Standard because the proposed cash amounts would have constituted too significant a proportion of the employee's total pay.

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3). AIG proposed cash salaries for three employees that, AIG asserted, were also entitled to substantial cash payments in 2009 pursuant to previously existing "retention" awards. Although the Office of the Special Master negotiated for the restructuring of similar arrangements at other Exceptional Assistance Recipients, discussions with AIG officials did not lead to an agreed upon restructuring of these "retention" awards. After consulting with officials at the Federal Reserve Bank of New York and officials at Treasury, and considering their opinions, the Special Master has concluded that, due to the unique circumstances currently found to exist at AIG, and the need to retain the services of these three employees who are deemed to be particularly critical to AIG's long-term financial success, restructuring these "retention" contracts would not be consistent with the Public Interest Standard. Instead, the Special Master has considered these retention awards when determining an appropriate reduction in proposed 2009 cash salaries for these employees.

The Special Master has determined that cash salaries of less than \$500,000 are generally consistent with the Public Interest Standard. In particular, the cash salaries of the three employees receiving payments pursuant to previously existing "retention" awards must not exceed this amount. The cash salaries that the Special Master has determined to be consistent with the Public Interest Standard for these employees are described in further detail in *Exhibits I* and *II*.

b. Stock Salary

First, the Special Master reviewed the amounts of compensation to be granted in the form of stock salary 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," *id.* § 30.16(b)(1)(v). In general, the Special Master has concluded that AIG's proposed amounts are consistent with the Public Interest Standard. These amounts, adjusted to reflect each employee's responsibilities and role with respect to any change in the financial health or competitive position of AIG, *id.* § 30.16(b)(1)(v), are described in further detail in *Exhibits I* and *II*.

Second, the Special Master reviewed the structure of AIG's stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). The Special Master has concluded that AIG's proposal, which contemplates that 50% of stock salary will be transferable *immediately* by the employee, does not provide sufficient alignment with long-term value creation.

The Special Master also reviewed the structure of AIG's stock salary proposal in light of the principle that an appropriate portion of compensation should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Stock salary that is transferable immediately permits an employee to liquidate his or her investment in the stock immediately rather than over a period designed to reflect performance.

Accordingly, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard would not permit immediate transferability or sale of stock salary. Instead, stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if AIG repays its TARP obligations.

Finally, the Special Master reviewed AIG's proposed stock salary in light of the principle that AIG must be able to maintain and attract the necessary employees to remain competitive in the marketplace. *See id.* § 30.16(b)(1)(ii). During this review, the Special Master consulted with officials at the Federal Reserve Bank of New York and officials at Treasury and considered their views. Based on this input, the Special Master has determined that the compensation structures consistent with the Public Interest Standard shall include stock units reflecting the value of a "basket" of four AIG insurance subsidiaries: American International Assurance Co. Ltd., American Life Insurance Co., Chartis, and AIG Domestic Life & Retirement Services Group. The value of each subsidiary, and therefore of the units, is to be determined on the basis of an adjusted book value measure that will exclude extraordinary events and give employees incentives to focus their efforts on the earnings generated by these critical businesses. Other terms and conditions of the "basket" units, including any alterations to the structure of the "basket" to maintain appropriate incentives for employees, will be determined by AIG subject to the approval of the Office of the Special Master.² The units are described in further detail in *Exhibits I and II*.

² The Covered Employees generally may not be paid a "bonus," or receive payments pursuant to an "incentive plan," except in limited circumstances prescribed by the Rule. The provisions of the Rule addressing compensation in the form of salary paid in property (such as stock) indicate that such payments will not constitute an "incentive plan" for purposes of the Rule if the payments are made pursuant to "an arrangement under which an employee receives a restricted stock unit that is analogous to TARP recipient stock," 31 C.F.R. § 30.1. Under the Rule, "a unit is analogous to stock if...the term 'TARP recipient stock' with respect to a particular employee recipient means the stock of a corporation...that is an 'eligible issuer of service recipient stock'" for purposes of certain federal taxation regulations, *id.* The Rule also provides that "[t]he Special Master shall have responsibility for interpreting" the Rule. *Id.* § 30.16(a)(1). AIG's proposed "basket" units are designed to reflect the value of businesses that comprise over 90% of AIG's overall value, and to give employees incentives, in AIG's unique circumstances, to maximize the value of those businesses and thus the value of the Company as a whole, while avoiding incentives for excessive risk taking. Accordingly, under these limited, unique circumstances, and without determining whether the "basket" units comprise "stock of a corporation...that is an 'eligible issuer of service recipient stock'" under the Rule, the Special Master has concluded that AIG's proposed subsidiary "basket" units constitute "restricted stock unit[s] that are analogous to TARP recipient stock" for purposes of the Rule. *Id.* § 30.1.

c. Annual Long-Term Incentive Awards

The Special Master also reviewed AIG's proposals in light of the principle that an "appropriate portion of the compensation should be performance-based," *id.* § 30.16(b)(1)(iv), and based on "performance metrics [that are] measurable, enforceable, and actually enforced if not met." *Id.* AIG's proposals did not include any amounts payable to employees in this group on the basis of the achievement of performance measures. 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 developed and reviewed in consultation with the Office of the Special Master.

The Special Master also evaluated AIG's proposals 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 in the Rule providing that performance-based compensation should be payable "over a relevant performance period," *id.* Accordingly, the Special Master has concluded that, to meet the Public Interest Standard, restricted stock granted in connection with these awards should not vest unless the employee remains employed until the third anniversary of grant. Finally, as required by the Rule, these awards may only be redeemed in 25% installments for each 25% of AIG's TARP obligations that are repaid. These awards are described in further detail in *Exhibits I* and *II*.

d. "Other" Compensation and Perquisites

AIG has proposed substantial payments of "other" compensation, as well as perquisites, to the Covered Employees. (AIG's submission included proposed payments of "other" compensation exceeding \$1,500,000 and perquisites exceeding \$900,000 to certain 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.

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

AIG 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 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, 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.

f. 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)(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.

2. Covered Employees at AIG Financial Products

The Office of the Special Master evaluated AIG’s proposed compensation structures for these employees in light of the principle that compensation structures should, where appropriate, reflect “the role [an] employee may have had with respect to any change in the financial health or competitive position of the TARP recipient,” *id.* § 30.16(b)(1)(vi). The performance of AIG Financial Products has contributed

significantly to the deterioration in AIG's financial health. Accordingly, the Special Master has determined that AIG's proposed compensation structures for these employees are inconsistent with the Public Interest Standard, because they do not adequately reflect the role of AIG Financial Products in the change in the financial health and competitive position of AIG.

In addition, the Special Master may take into account compensation structures, such as legally binding rights under valid employment contracts, that are not subject to review by the Special Master. *Id.* § 30.16(a)(3). These employees received significant bonus payments in early 2009 notwithstanding AIG Financial Products' role in the events necessitating taxpayer intervention. Accordingly, taking into account the payments made to these employees in early 2009, as well as the other principles set forth in the Rule, the Special Master has concluded that only the payment of these employees' base salaries as in effect on December 31, 2008, and no further amounts of any kind, is consistent with the Public Interest Standard. These amounts are described in further detail in *Exhibits I* and *II*.

The Office of the Special Master is engaged in ongoing discussions with the Company with respect to these employees. These discussions have emphasized the importance of the repayment of the entire pledged amount by each Covered Employee who pledged to return bonus amounts paid in 2009. Until the Special Master's consideration of those matters is complete, no payments of compensation in 2009 to these employees, other than continuation of the cash salaries in effect on December 31, 2008, would be consistent with the Public Interest Standard.

3. *Departed Employees*

Thirteen employees that would have been Covered Employees had they remained employed are no longer employed by the Company. With respect to those 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)(iv). In light of the importance of this principle, AIG 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 be granted unless the AIG Compensation and Management Resources Committee determines to grant such an award 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, AIG’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 award on the basis of its overall evaluation of the employee’s or AIG’s performance (notwithstanding full or partial satisfaction of the performance criteria).

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 AIG. 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, AIG is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* AIG must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with AIG’s senior risk officers any risks that could threaten the value of AIG. 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) CEO compensation plans that could lead CEOs to take unnecessary and excessive risks that threaten the value of AIG; (2) the CEO or other employees’ compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) the employee compensation plans that could encourage the manipulation of AIG’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 compensation committee must disclose to Treasury an annual narrative description of whether

AIG, 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) *Disclosure of Perquisites.* As noted in Part IV, AIG must provide to Treasury an annual disclosure of any perquisite whose total value for AIG’s fiscal year exceeds \$25,000 for each of the Covered Employees. AIG 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.* AIG 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. AIG must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay.* AIG must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material). *Id.* § 30.13. AIG conducted its first such vote in July 2009.
- (6) *Policy Addressing Excessive or Luxury Expenditures.* AIG was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on AIG’s website. If AIG’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 the company website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, AIG is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (8) *CEO and CFO Certification.* AIG’s chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of the Company’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 AIG 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, AIG 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 AIG 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 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
COVERED EMPLOYEES

2009 Compensation

Company Name: American International Group, Inc.

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.)
1	\$3,000,000	\$4,000,000	\$3,500,000	\$10,500,000
110	\$350,000	\$100,000	\$225,000	\$675,000
137	\$125,000	\$0	\$0	\$125,000
145	\$177,799	\$0	\$0	\$177,799
150	\$425,000	\$0	\$0	\$425,000
157	\$125,000	\$0	\$0	\$125,000
163	\$350,000	\$3,104,167	\$833,333	\$4,558,333
182	\$144,000	\$0	\$0	\$144,000
188	\$100,000	\$0	\$0	\$100,000
206	\$450,000	\$4,691,667	\$2,000,000	\$7,600,000
209	\$425,000	\$0	\$0	\$425,000
255	\$450,000	\$0	\$0	\$450,000
267	\$375,000	\$3,566,666	\$1,750,000	\$6,108,333

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

2008 Cash decreased by \$34.4M or 90.8%
Total Direct Compensation decreased by \$28.4M or 57.8%

2007 Cash decreased by \$29.0M or 89.2%
Total Direct Compensation decreased by \$26.3M or 55.7%

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.

Note: 3: The terms and conditions of the stock salary and long-term restricted stock to be awarded to Employee 1, the Chief Executive Officer, differ from those described in these Exhibits. See *supra* Determination Memorandum note 1.

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 those 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.** As described in Part IV, stock salary will be granted in the form of stock units reflecting the value of a "basket" of four AIG insurance subsidiaries: American International Assurance Co. Ltd., American Life Insurance Co., Chartis, and AIG Domestic Life & Retirement Services Group. The value of each subsidiary, and therefore of the units, will be determined on the basis of an adjusted book value measure that will exclude extraordinary events. The units 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 early if AIG repays its TARP obligations. Other terms and conditions of the "basket" units, including any alterations to the structure of the "basket" to maintain appropriate incentives for employees, will be determined by AIG subject to the approval of the Office of the Special Master.

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.

- **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 Management Resources Committee of AIG'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.

5. Citigroup, Inc.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Mr. Michael S. Helfer, Esquire
General Counsel &
Corporate Secretary
Citigroup Inc.
399 Park Avenue
New York, NY 10022

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

Dear Mr. Helfer:

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 Citigroup Inc. ("Citigroup"). 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).

Pursuant to the Interim Final Rule, the Special Master is required 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 Citigroup's senior executive officers and certain most highly compensated employees generally must comport with the following important standards:

- There can be no guarantee of any "bonus" or "retention" awards among the compensation structures approved by the Special Master. Cash guarantees payable in 2009 pursuant to previously existing agreements must be restructured to be payable in stock awards that may only be liquidated over time. In Citigroup's case, this will require the restructuring of several agreements between Citigroup and its employees, and the deferral of payments to certain employees of Phibro, LLC until such time as Phibro is no longer a subsidiary of Citigroup.

- Rather than cash, the majority of each individual's base salary will be paid in the form of Citigroup 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 early if Citigroup repays its TARP obligations. This structure encourages employees to remain employed by Citigroup and to maximize its long-term value.
- 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 Citigroup's case, cash compensation for these employees will decrease 96% from 2008 levels.
- Where applicable, compensation should reflect the employee's role, if any, with respect to the change in Citigroup's financial health during 2008, and may take into account payments not subject to the review of the Special Master, including payments pursuant to legally binding rights under previously existing valid employment contracts. *Id.* § 30.16(a)(3)(i).
- Total compensation for each individual must be appropriate when compared with the total compensation for persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for comparable employees. Overall, total compensation must be significantly reduced from the amounts paid in 2008. In Citigroup's case, total compensation for these employees will decrease 70% 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. These awards, however, must be payable in the form of restricted stock that will be forfeited unless the employee stays with Citigroup for at least three years following grant, and may only be redeemed in 25% installments for each 25% of Citigroup'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 these employees will be subject to recovery or “clawback” if the payments are based on materially inaccurate financial statements, 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 to the satisfaction of the Special Master).

- 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), Citigroup must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Personnel and Compensation Committee of Citigroup’s Board of Directors, which is composed solely of independent directors. 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.
- Citigroup may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Personnel and Compensation Committee of Citigroup’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 Citigroup’s value.

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

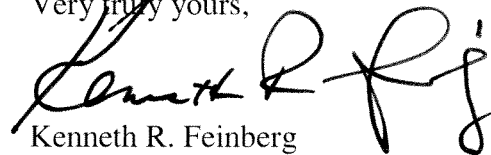
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to Citigroup’s compensation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

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on Citigroup’s performance, and ties the financial incentives of Citigroup 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 will only be redeemable in equal, one-third installments beginning on the second anniversary of the date the stock salary is earned (in each case subject to acceleration by one year if Citigroup repays its TARP obligations), the ultimate value realized by the employee will depend on Citigroup’s performance over the long term. Guaranteed amounts payable in cash, in contrast, are generally rejected. *Id.* § 30.16(b)(1)(iv).

- *Taxpayer return.* The compensation structures approved by the Special Master reflect the need for Citigroup 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. Overall, the compensation structures provide for total compensation packages that generally target 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 Citigroup employees is weighted heavily toward long-term structures that are tied to Citigroup's performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to Citigroup 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, Citigroup may, within 30 days of the date hereof, request in writing that the Special Master reconsider the determinations set forth in *Annex A*. If Citigroup 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: Lewis B. Kaden, Esquire
Mr. Paul McKinnon

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.*

Citigroup Inc. (“Citigroup,” or the “Company”), one of seven Exceptional Assistance Recipients, has submitted to the Special Master proposed compensation structures for review pursuant to Section 30.16(a)(3) of the Rule. These compensation structures 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 eighteen 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 Special Master has completed the review of the Company’s proposed compensation structures for the Covered Employees pursuant to the principles set forth in the Rule. § 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 Treasury employees working in the Office of the Special Master, conducted extensive discussions with Citigroup officials. During these discussions, the Office of the Special Master informed Citigroup 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 Citigroup 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 Citigroup, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required Citigroup to submit data describing its proposed compensation structures, and the payments that would result from the proposals, 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). Citigroup was required to submit competitive market data indicating how the amounts payable under Citigroup's proposed compensation structures relate to the amounts paid to persons in similar positions or roles at similar entities. Citigroup 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.

Citigroup submitted this information to the Office of the Special Master on August 14, 2009. Following a preliminary review of the submission, and the submission of certain additional information, on August 31, 2009, the Special Master determined that Citigroup'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 Citigroup's proposed compensation 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.*

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 III below, when evaluating the Company's proposed compensation 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 Citigroup's proposed compensation structure, 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 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, 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 amounts 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. Citigroup Proposals

Citigroup has provided the Office of the Special Master with detailed information concerning its proposed 2009 compensation structures for the Covered Employees, including amounts proposed to be paid under the compensation structure for each Covered Employee (the “Proposed Structures”).

Citigroup supported its proposal 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.

1. *Citigroup Corporate and Operating Units*

Citigroup has proposed compensation structures for each of two Senior Executive Officers,¹ as well as for 11 Most Highly Compensated Employees, each of whom serves as an executive in Citigroup’s corporate offices or as a senior executive of a Citigroup subsidiary.²

a. Cash Salary

With the exception of the Chief Executive Officer, who has agreed to continue receiving an annual base salary of \$1 during 2009, Citigroup generally proposed to increase cash salaries for employees in this group. The proposed increases included cash base salaries as high as \$800,000 per year. Citigroup’s submission to the Office of the Special Master asserted that base salaries at this level could be justified by reference to the compensation of comparable employees at comparable financial institutions.

b. Stock Salary

Citigroup proposed that employees in this group receive substantial compensation in the form of vested Citigroup stock delivered on the Company’s payroll schedule. Citigroup proposed that one-third of the stock be transferable upon grant; one-third be transferable on the first anniversary of the grant date; and one-third be transferable on the

¹ Citigroup had three Chief Financial Officers during 2009. Because “an individual who served as the [CFO] of a TARP recipient...is a SEO for purposes of that fiscal year,” each of these three individuals is included in Citigroup’s Covered Employees during 2009. See Frequently Asked Questions, Troubled Asset Relief Program Standards for Compensation and Corporate Governance, FAQ #4, available at <http://www.financialstability.gov/docs/IFrFAQsPartI.pdf>.

² Compensation for Covered Employees at two specific Citigroup subsidiaries, Citigroup Derivatives Markets, Inc. (“CDMI”) and Phibro LLC, are addressed in further detail in Parts IV.A.2. and IV.A.3.

second anniversary of the grant date. Citigroup proposed to deliver annualized amounts ranging from \$2,311,667 to \$5,525,000 to employees in this group.

c. Annual Long-Term Incentive Awards

Citigroup proposed that employees in this group be eligible, in the discretion of the Company, for grants of substantial incentive awards with total value ranging from under \$1,393,333 to \$3,000,000. Citigroup proposed that the awards be payable in the form of restricted Citigroup stock that vested if the employee remained employed by Citigroup on the second anniversary of the grant date.

d. “Other” Compensation and Perquisites

Citigroup proposed payments of “other” compensation, as well as perquisites, to the employees in this group. These proposed payments varied in value.

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

Citigroup proposed that certain employees in this group receive compensation in the form of accruals under a “non-qualified deferred compensation” plan.

f. Severance Plans

Citigroup’s submission to the Office of the Special Master indicated that the Proposed Structures would, in some cases, result in increases in amounts payable to these employees pursuant to severance arrangements. These arrangements generally provide for amounts payable upon termination of employment, including termination in light of the employee’s performance.

2. *Covered Employees Party to Certain Agreements*
(Citigroup’s CDMI & Investment and Advisory Subsidiaries)

Citigroup has also proposed compensation structures for six Covered Employees who are party to written employment agreements with Citigroup.³ Citigroup argued that the agreements provided for legally binding rights under valid employment contracts, *see* 31 C.F.R. § 30.10(e)(2). Under the Rule, amounts payable pursuant to such agreements are generally not subject to the review of the Special Master, although such amounts may be taken into account by the Special Master in connection with determinations with respect to prospective compensation payable to the employee, *id.* § 30.16(a)(3)(i).

Citigroup’s proposed compensation structure for each of the six employees in this group emphasized the payment of small cash salaries accompanied by large cash payments reflecting the terms of the existing agreements.

³ Three of the Covered Employees are employed by Citigroup’s CDMI subsidiary. The remaining three employees serve as the senior employees of Citigroup investment and advisory subsidiaries.

3. Covered Employees at Phibro, LLC

Citigroup has also proposed compensation structures for two Covered Employees employed by Phibro, LLC, a subsidiary engaged in commodities trading. In connection with the submission of its proposed compensation structures for these employees, Citigroup provided the Office of the Special Master with a detailed description of the historical compensation practices at this subsidiary. Generally, these practices called for Phibro to establish cash “bonus pools” in amounts based upon Phibro’s annual trading profits, and for these pools to be allocated in the discretion of Phibro’s Chief Executive Officer.

Each of the two Covered Employees employed by Phibro has historically participated in these bonus pools. As noted above, Citigroup argued that the employees’ participation in these bonus pools reflected legally binding rights under valid employment contracts, *see id.* § 30.10(e)(2), and thus were not subject to the review of the Special Master. Accordingly, Citigroup’s proposed compensation structure for each of these two employees emphasized the payment of small cash salaries accompanied by large cash payments from Phibro’s bonus pools.

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 III above. In light of this review and analysis, the Special Master has determined that both the structural design of Citigroup’s proposals and the amounts potentially payable to Covered Employees under the proposals would be 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. Citigroup Corporate and Operating Units

a. Cash Salary

The Special Master reviewed Citigroup’s proposal with respect to cash salary 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,” *id.* § 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. Citigroup proposed annual cash salaries in excess of \$800,000 for the three employees in this group. The Special Master

has concluded that the proposed cash salaries are inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to cash salaries provided to persons in similar positions or roles at similar entities.

Accordingly, the Special Master has determined that Citigroup's proposed cash base salaries for these employees are inconsistent with the Public Interest Standard. As described in further detail in *Exhibits I* and *II*, the cash salaries for these employees that the Special Master has determined to be consistent with the Public Interest Standard are comparable to those amounts for persons in similar positions or roles at similar entities, and are generally less than \$500,000.

b. Stock Salary

First, the Special Master reviewed the amounts of compensation to be granted in the form of stock salary 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." *Id.* § 30.16(b)(1)(v). The Special Master has concluded that the proposed amounts to be delivered in stock salary are inconsistent with the Public Interest Standard because the amounts potentially payable to certain Covered Employees cannot be supported by comparison to the compensation payable to persons in similar positions or roles at similar entities. The Special Master has concluded that lesser amounts payable in the form of stock salary are consistent with the Public Interest Standard. These amounts are described in further detail in *Exhibits I* and *II*.

Second, the Special Master reviewed the structure of Citigroup's stock salary proposal in light of the principle that compensation structures should align performance incentives with long-term value creation rather than short-term profits. *See id.* § 30.16(b)(1)(i). The Special Master has concluded that Citigroup's proposal, which contemplates that one third of stock salary will be transferable *immediately* by the employee, does not provide sufficient alignment with long-term value creation.

The Special Master also reviewed the structure of Citigroup's stock salary proposal in light of the principle that an appropriate portion of compensation should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Stock that is immediately transferable permits an employee to liquidate his or her investment in the stock immediately rather than over a period designed to reflect performance. Accordingly, the Special Master has determined that the structure of Citigroup's stock salary proposal is inconsistent with the Public Interest Standard.

Accordingly, the compensation structures the Special Master has determined to be consistent with the Public Interest Standard would not permit immediate transferability or sale of stock salary. Instead, stock salary may only be redeemable in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if Citigroup repays its TARP obligations.

c. Annual Long-Term Incentive Awards

The Special Master evaluated Citigroup’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). Citigroup’s proposed awards would have been granted in the discretion of the Company rather than based on performance metrics. The Special Master has concluded that the proposed incentive awards are inconsistent with the Public Interest Standard because they could be granted without respect to the achievement of objective, measurable performance metrics.

The Special Master also evaluated Citigroup’s proposed awards 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 in the Rule providing that performance-based compensation should be payable “over a relevant performance period,” *id.* Restricted stock granted in connection with Citigroup’s proposed awards would have vested on the second anniversary of the grant date. Accordingly, the Special Master has concluded that the proposed incentive awards are inconsistent with the Public Interest Standard because they would have vested over a period too short to be relevant to the long-term performance of the Company.

Accordingly, 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 Citigroup’s TARP obligations that are repaid.

d. “Other” Compensation and Perquisites

Citigroup proposed limited 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.⁴

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

Citigroup 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, 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, 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.

f. 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)(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.

⁴ Citigroup has, however, identified four 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 has concluded that such payments, not to exceed \$350,000 per employee, are consistent with the Public Interest Standard.

2. Covered Employees Party to Certain Agreements *(Citigroup's CDMI & Investment and Advisory Subsidiaries)*

The Special Master reviewed Citigroup's proposed compensation structures for these employees in light of the principle that compensation structures should be "performance-based over a relevant performance period," *id.* § 30.16(b)(1)(iv). Citigroup's proposals for these employees generally provided for the payment of substantial guaranteed minimum cash amounts. The Special Master has concluded that the proposal is inconsistent with the Public Interest Standard because the payment of a large cash lump sum is not adequately linked to the performance of the Company over a relevant performance period.

The Special Master also reviewed the proposals in light of the requirement that compensation structures "avoid incentives to take unnecessary or excessive risks," *id.* §30.16(b)(1)(i). A guaranteed minimum amount provides the employee with little downside risk in the event of poor performance, but potentially unlimited gain in the event that substantial risk-taking leads to significant profits. Accordingly, the Special Master has concluded that the proposal is inconsistent with the Public Interest Standard because the presence of a guaranteed minimum amount may lead to incentives to take unnecessary or excessive risks.

During discussions with the Company, the Office of the Special Master conveyed the view that the proposals were inconsistent with the Public Interest Standard. Citigroup asserted that these payments were to be made under agreements providing for legally binding rights under valid written employment contracts, *see id.* § 30.10(e)(2). Following extensive discussions, all six of the employees in this group agreed to waive their rights to the cash payments reflected in the Company's proposals.

Accordingly, these payments will be restructured to be consistent with the Public Interest Standard and will include the following:

- Cash base salaries no greater than \$475,000.
- Grants of vested stock salary redeemable only in three equal, annual installments beginning on the second anniversary of grant, with each installment redeemable one year early if Citigroup repays its TARP obligations.
- Subject to the achievement of objective, specified performance metrics developed in consultation with the Office of the Special Master, an annual long-term incentive award, granted in the form of Citigroup restricted stock that will be forfeited unless the employee stays with Citigroup for at least three years following grant, and may only be redeemed in 25% installments for each 25% of Citigroup's TARP obligations that are repaid.⁵

⁵ Stock granted pursuant to such awards, if any, for these three employees may vest if the employee is terminated by Citigroup without "cause" prior to the third anniversary of the grant date.

The compensation structures for these employees will also be subject to the limitations described in Parts IV.B.1.d., (“other” compensation and perquisites), IV.B.1.e. (non-qualified deferred compensation), and IV.B.1.f. (severance plans) above.

3. Covered Employees at Phibro, LLC

The Special Master reviewed the proposals for these two employees in light of the principle that compensation arrangements should not “reward employees for short-term or temporary increases in value,” *id.* § 30.16(b)(1)(i). Citigroup’s proposal with respect to these employees called for the payment of substantial bonuses based upon Phibro’s performance during a fifteen-month period. Accordingly, the Special Master concluded that the proposals were inconsistent with the Public Interest Standard because they could provide substantial rewards for short-lived increases in value.

The Special Master also reviewed the proposals in light of the requirement that compensation structures should “avoid incentives to take unnecessary or excessive risks,” *id.* §30.16(b)(1)(i). Citigroup’s proposal called for the payment of cash bonuses based on the short-term results of a trading operation involving, according to Citigroup’s analysis, long-term risk-taking that could result in losses exceeding several billion dollars. Accordingly, the Special Master concluded that the proposals were inconsistent with the Public Interest Standard because they could provide the employees with incentives to take unnecessary or excessive risks.

In addition, the Special Master reviewed the proposals in light of the principle that “amounts payable...should be consistent with, *and not excessive taking into account*, compensation structures and amounts for persons in similar positions or roles.” *Id.* § 30.16(b)(1)(v) (emphasis added). Citigroup’s proposal for one of these employees involved the payment of a 2009 bonus in excess of \$95,000,000. The Special Master concluded that this amount was excessive taking into account compensation amounts for persons in similar positions or roles at similar entities.

During discussions with the Company, the Office of the Special Master conveyed the view that the proposal was inconsistent with the Public Interest Standard. Citigroup asserted that these payments were to be made under agreements providing for legally binding rights under valid written employment contracts, *see id.* § 30.10(e)(2). During these discussions, and while the proposals were under consideration by the Special Master, Citigroup informed the Special Master that the Company had entered into a definitive agreement providing for the sale of Phibro to Occidental Petroleum, Inc., which has not received assistance under the TARP. Accordingly, the compensation structures of both Covered Employees at Phibro will no longer be subject to the review of the Special Master in 2010.

One of the Covered Employees at Phibro entered into an agreement providing that no amounts will be paid to that employee for 2009 until Phibro is no longer a subsidiary of Citigroup, and that the amounts will not be payable in cash until January 2011. With respect to 2009, the Special Master has concluded that, to be consistent with the Public

Interest Standard, that employee's compensation structure must provide for no compensation of any kind during 2009. Accordingly, amounts paid to the employee prior to the date of this Determination Memorandum shall be repaid to Citigroup.

The second Covered Employee at Phibro was determined not to have a legally binding right to the proposed amounts. *See id.* § 30.10(e)(2). Accordingly, the Office of the Special Master engaged in discussions with the Company to ensure that no payments would be made to this employee that would be inconsistent with the Public Interest Standard. The compensation structures for this employee that the Special Master has determined to be consistent with the Public Interest Standard will be structured in accordance with the conclusions of the Special Master described in Part IV.B.2. above. The compensation structures for this employee will also be subject to the limitations described in Parts IV.B.2.d., ("other" compensation and perquisites), IV.B.2.e. (non-qualified deferred compensation), and IV.B.2.f. (severance plans) above. Further detail is provided in *Exhibits I and II*.

4. 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 those 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, Citigroup 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 be granted unless the Personnel and Compensation Committee of Citigroup's Board of Directors determines to grant such an award 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, Citigroup'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 award on the basis of its overall evaluation of the employee's or Citigroup's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, as noted in Part III, 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 Citigroup. 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, Citigroup is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* Citigroup must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with Citigroup's senior risk officers any risks that could threaten the value of Citigroup. 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 Citigroup; (2) SEO or other employee compensation plans that could encourage behavior focused on short-term results and not on long-term value creation; and (3) employees' compensation plans that could encourage the manipulation of Citigroup'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 compensation committee must disclose to Treasury an annual narrative description of whether Citigroup, 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) *Disclosure of Perquisites.* As noted in Part IV, Citigroup must provide to Treasury an annual disclosure of any perquisite whose total value for Citigroup's fiscal year exceeds \$25,000 for each of the Covered Employees. Citigroup 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.* Citigroup 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. Citigroup must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay.* Citigroup must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material). *Id.* § 30.13.
- (6) *Policy Addressing Excessive or Luxury Expenditures.* Citigroup was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on Citigroup's website. If Citigroup'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 the company website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups.* Except as explicitly permitted under the Rule, Citigroup is prohibited from providing (formally or informally) tax gross-ups to any of the Covered Employees. *Id.* § 30.11(d).
- (8) *CEO and CFO Certification.* Citigroup's chief executive officer and chief financial officer must provide to the Securities and Exchange Commission written certification of the Company'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 Citigroup 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, Citigroup 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 Citigroup 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 *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 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
COVERED EMPLOYEES

2009 Compensation

Company Name: Citigroup Inc.

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.)
100001	\$1	\$0	\$0	\$1
100004	\$475,000	\$5,433,333	\$2,850,000	\$8,550,000
100005	\$500,000	\$3,400,000	\$1,950,000	\$5,850,000
100006	\$0	\$0	\$0	\$0
100007	\$475,000	\$5,629,167	\$3,000,000	\$9,000,000
100008	\$475,000	\$3,733,333	\$2,000,000	\$6,000,000
100009	\$475,000	\$3,979,167	\$2,133,333	\$6,400,000
100010	\$475,000	\$5,699,390	\$3,000,000	\$9,000,000
100011	\$475,000	\$4,683,333	\$2,475,000	\$7,425,000
100013	\$475,000	\$5,399,390	\$2,850,000	\$8,550,000
100014	\$475,000	\$5,733,333	\$3,000,000	\$9,000,000
100015	\$475,000	\$4,400,000	\$2,333,333	\$7,000,000
100017	\$475,000	\$3,200,000	\$1,733,333	\$5,200,000
100019	\$475,000	\$3,000,000	\$1,633,333	\$4,900,000
100020	\$475,000	\$2,845,833	\$1,556,250	\$4,668,750
100021	\$475,000	\$1,775,000	\$1,000,000	\$3,000,000
100022	\$475,000	\$2,520,000	\$1,393,333	\$4,180,000
100023	\$475,000	\$3,733,333	\$2,000,000	\$6,000,000
100025	\$475,000	\$250,000	\$237,500	\$712,500
100075	\$500,000	\$5,062,500	\$2,666,667	\$8,000,000
100107	\$500,000	\$2,916,666	\$1,666,667	\$5,000,000

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

2008 Cash decreased by \$244.9M or 96.4%
Total Direct Compensation decreased by \$272M or 69.7%

2007 Cash decreased by \$78.4M or 89.6%
Total Direct Compensation decreased by \$217.3M or 64.7%

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 those 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 based on the fair market value 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 Personnel and Compensation Committee of Citigroup'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.

6. General Motors Company



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.

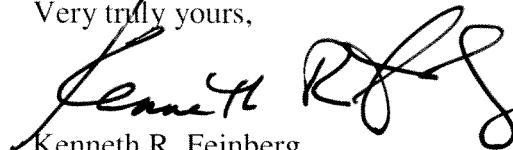
The Special Master’s review has been guided by a number of considerations, including each of the principles articulated in the Interim Final Rule. *Id.* § 30.16(b)(1). The following principles were of particular importance to the Special Master in his determinations with respect to GM’s compensation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