

Session No. 14: Reforming Executive Compensation

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 Bank of America, Corp., October 22, 2009.

Report of The Special Master for TARP Executive Compensation, Approval Letter to Chrysler Group, LLC, 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.

2. Bank of America Corporation



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22 2009

Mr. J. Steele Alphin
Chief Administrative Officer
Bank of America Corporation
100 N. Tyron Street
NCI-007-58-22
Charlotte, North Carolina 28255-001

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

Dear Mr. Alphin:

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 Bank of America Corporation ("BofA"). 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 senior executive officers and certain most highly compensated employees of BofA 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. 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.
- Rather than cash, the majority of each individual'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 BofA 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 BofA's case, cash compensation for these employees will decrease 94% from 2008 levels
- Total compensation for each individual must both reflect the individual's value to BofA and be appropriate when compared with total compensation provided to persons in similar positions or roles at similar entities. Overall, total direct compensation must be significantly reduced from 2008 amounts. In BofA's case, total direct compensation for these employees will decrease 62% from 2008 levels. *Id.* § 30.16(a)(3)(i).
- If—and only if—the employee achieves objective performance metrics developed and reviewed in consultation with the Office of the Special Master, 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 BofA for at least three years following grant, and may only be redeemed in 25% installments for each 25% installment of BofA'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), BofA must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Benefits Committee of BofA'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 or derivative transactions involving BofA stock that would undermine the long-term performance incentives created by the compensation structures.
- BofA may not provide a tax “gross up” of any kind to these employees.
- At least once every year, the Compensation and Benefits Committee of BofA’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 BofA’s value.

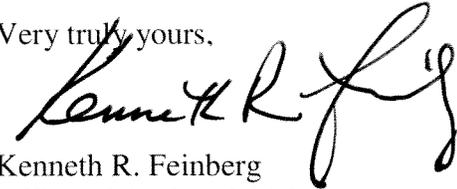
These requirements are described in further detail in the attached Determination Memorandum.

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 BofA’s compensation structures:

- *Performance-based compensation.* The overwhelming majority of approved compensation depends on BofA’s performance, and ties the financial incentives of BofA 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 salary stock is earned (with each installment redeemable one year earlier if BofA repays its TARP obligations), the ultimate value realized by the employee will depend on BofA’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 BofA 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 similarly situated employees of similarly situated companies. Overall, the compensation structures generally provide for total compensation packages that target the 50th percentile when compared to other executive officers and employees. *Id.* § 30.16(b)(1)(ii).
- *Appropriate Allocation.* The total compensation payable to BofA employees is weighted heavily toward long-term structures that are tied to BofA’s performance and are easily understood by shareholders. As a general principle, guaranteed income is rejected. Fixed compensation payable to BofA 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, the Company 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 the Company 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 fluid and cursive, with a large, stylized "K" and "F".

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

Attachments

cc: Mr. Thomas M. Ryan
Jana J. Litsey, Esquire
Mr. Mark Behnke

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.*

Bank of America Corporation (“BofA” 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 3 employees that the Company has identified as Senior Executive Officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 11 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 proposals 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 Treasury employees working in the Office of the Special Master, conducted extensive discussions with BofA officials. During these discussions, the Office of the Special Master informed BofA 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 BofA explored potential compensation structures for the Covered Employees.

The Rule required that each Exceptional Assistance Recipient submit proposals for each Senior Executive Officer and Most Highly Compensated Employee no later than

August 14, 2009. *Id.* § 30.16(a)(3). On July 20, 2009, the Special Master requested from each Exceptional Assistance Recipient, including BofA, certain data and documentary information necessary to facilitate the Special Master’s review of the Company’s compensation structures. The request required BofA to submit data describing its proposals, 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). BofA was required to submit competitive market data indicating how the amounts payable under BofA’s proposals relate to the amounts paid to similarly situated employees at similarly situated financial institutions. BofA 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.

BofA 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 BofA’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 BofA’s proposals 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 proposals 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 BofA's proposed compensation 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 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 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. BofA Proposals

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

BofA 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 similarly situated employees at a “peer group” of entities selected by the Company.

1. Covered Employees Generally

The following structures were proposed by BofA for the Covered Employee generally, with the exception of BofA’s Chief Executive Officer (“CEO”) and an employee with an existing arrangement that provides a cash guarantee; each of those employees are addressed separately.

a. Cash Salary

Except for the Company’s CEO, BofA proposed increasing the cash salary of each Covered Employee to annualized amounts of either \$700,000 or \$950,000. The Company’s proposal asserted that cash salaries at such levels could be justified by reference to the compensation of similarly situated employees at similarly situated companies.

b. Stock Salary

BofA proposed that Covered Employees receive substantial “stock salary,” in annualized amounts ranging from \$1,966,667 to \$19,050,000. Stock salary would be delivered on the Company’s regular payroll dates in the form of fully vested stock units, which would then “settle” into regular shares and become transferable 40% on the first anniversary of grant and 30% each on the second and third anniversaries.

c. Annual Long-Term Incentive Awards

BofA proposed that the Covered Employees be eligible in 2009 for substantial grants of annual long-term incentive awards, with total potential values ranging from \$1,333,334 to \$10,000,000. Under the proposal, the amount of an employee’s award would be calculated based on achievement of corporate and/or business unit financial goals. Awards would be paid in the form of long-term restricted stock with vesting subject to the employee providing two years of service from the date of award, and actual

payment in 25% installments for each 25% repayment of the Company's TARP obligations.

After submitting the Proposed Structures, the Company informed the Office of the Special Master that neither the CEO nor any of his direct reports who were serving in leadership positions at either legacy BofA or Merrill Lynch during 2008 (including those among the Covered Employees) would be eligible for an annual long-term incentive award in 2009.

d. “Other” Compensation and Perquisites

BofA proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

e. Non-Qualified Deferred Compensation

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

2. *Certain other Covered Employees*

a. Covered Employee with a Cash Guarantee

BofA included a proposal with respect to a Covered Employee who is party to an agreement with the Company providing for a substantial guaranteed cash payment in 2009 BofA believed this agreement created a legally binding right under a valid written employment contract, *see* 31 C.F.R. § 30.10(e)(2). BofA proposed that the amount of cash that would otherwise be delivered to this Covered Employee be instead delivered as a \$700,000 cash salary, with the remainder of the guaranteed amount paid in salary stock provided on the same terms that BofA proposed for salary stock generally. The Covered Employee agreed to waive his right to the guaranteed cash payment in exchange for the proposed structure.

b. CEO

As initially submitted by BofA, the Proposed Structure for the CEO included cash salary of \$950,000 (reduced from his 2008 salary of \$1,500,000), stock salary of \$7,050,000 and eligibility for an annual long-term incentive award of up to \$4,000,000.

On September 30, 2009, the CEO announced his retirement from the Company, effective December 31, 2009. Following this announcement, the Company proposed instead that the CEO be paid no stock salary or long-term incentive award for 2009 and a prospective cash salary of \$0 from the date of this Determination Memorandum through his last day of employment.

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 BofA'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. Covered Employees Generally

a. Cash Salary

The Special Master has 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." *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. Such levels of cash salaries balance the need to attract and retain talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

In conducting the review of the proposed amounts of cash salaries, the Special Master made use of the resources described in Part II. Based on this review, the Special Master has concluded that BofA's 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 similarly situated employees of similar companies.

In addition, the Special Master has considered whether BofA's proposed salaries reflect the current or prospective contributions of an employee to the value of the [company]," *id.* § 30.16(b)(1)(vi). Under the BofA proposal, each Covered Employee would receive either a \$700,000 or \$950,000 cash salary. The Special Master has concluded that the proposed salaries are inconsistent with the Public Interest Standard because they do not differentiate among employees in a manner that reflects their individual values to the Company.

Finally, 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 period." *Id.* § 30.16(b)(1)(iv). The Special Master

has concluded that the portion of the Covered Employee's compensation that may be allocated to cash salary should in most cases 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 to be consistent with the Public Interest Standard compare appropriately to those paid to similar employees at similar firms, and are generally less than \$500,000.

The Special Master has also concluded that, for cash salaries payable to certain employees to be consistent with the Public Interest Standard, further reductions are required in consideration of "other compensation earned, accrued, or paid" by BofA in 2009. *Id.* § 30.16(a)(3). These adjustments apply to certain employees who received cash bonus payments in 2009 that were excessive in light of bonuses provided to "persons in similar positions or roles at similar entities," *id.* § 30.16(b)(1)(v), and the "prospective contributions of [the employee] to the value of the exceptional assistance recipient, taking into account multiple factors such as...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).¹

b. Stock Salary

The Special Master has reviewed the amount of stock salary BofA proposed to pay the Covered Employees 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). Based on this review, the Special Master has concluded that the amount of stock salary BofA proposed paying to the Covered Employees is excessive and that the proposals are inconsistent with the Public Interest Standard. The compensation structures that the Special Master has determined are consistent with the Public Interest Standard provide lesser amounts of stock salary, as described in further detail in *Exhibits I* and *II*.

The Special Master also has concluded that, for the amount of stock salary potentially payable to certain employees to be consistent with the Public Interest Standard, further reductions were required in consideration of "other compensation earned, accrued, or paid" by BofA in 2009. *Id.* § 30.16(a)(3). These adjustments apply to certain employees who received cash bonus payments in 2009 that were excessive in light of bonuses provided to "persons in similar positions or roles at similar entities," *id.*

¹ The Special Master's determinations regarding such "other compensation earned, accrued, or paid" considered only the extent to which the amounts of such compensation should be considered in the analysis with respect to whether the amounts potentially payable to the Covered Employees were consistent with the Public Interest Standard. See 31 C.F.R. § 30.16(a)(3)(i). The determinations are not, and should not be construed as an analysis, opinion, or determination under any other legal standard applicable to the payment or receipt of such compensation or to any act arising from or relating to such payment or receipt, including, without limitation, the Special Master's authority under 31 C.F.R. § 30.16(a)(3) to review whether such payments were "inconsistent with the purposes of section 111 of EESA or TARP, or otherwise contrary to the public interest." *Id.*

§ 30.16(b)(1)(v), and the “prospective contributions of [the employee] to the value of the exceptional assistance recipient, taking into account multiple factors such as . . . 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).²

The Special Master has also reviewed the structure of BofA’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 would not be performance-based over the relevant performance period to provide such a long-term incentive. *See Id.* § 30.16(b)(1)(iv). Instead, such stock salary could incentivize employees to pursue short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. *See Id.* § 30.16(b)(1)(i). Under the Company’s proposal, 40% of stock salary would be redeemable one-year after being granted. The Special Master has concluded that a one year holding period is insufficient to provide a long-term incentive and could result in payments that would be inconsistent with the Public Interest Standard.

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

c. Annual Long-Term Incentive Awards

The Special Master has reviewed BofA’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). The Special Master, also has evaluated BofA’s proposed awards by application of recently adopted international standards that provide that incentive compensation should generally be payable over a period of three years, as well as the Rule’s principle that performance-based compensation should be payable “over a relevant performance period,” *id.*

Although BofA proposed individually tailored performance metrics to calculate the size of long-term restricted stock awards, which the Special Master concluded are generally consistent with the Public Interest Standard, the restricted stock would vest after only two years of service. The Special Master has concluded that BofA’s proposed annual long-term incentive awards are inconsistent with the Public Interest Standard because a two-year period of service is insufficient.

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

² See *supra*, note 1.

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 BofA's TARP obligations that are repaid.

d. “Other” Compensation and Perquisites

BofA 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*, and 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. Non-Qualified Deferred Compensation

BofA 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.

f. 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.

2. *Certain other Covered Employees*

The proposals for two Covered Employees were reviewed and analyzed by the Special Master separately because of one employee’s existing cash guarantee and the other’s unique role in the Company, respectively.

a. Covered Employee with a Cash Guarantee

The Special Master has concluded that guaranteed cash payments are not “performance-based over a relevant performance period,” *Id.* § 30.16(b)(1)(iv). Indeed, the principles identified in the Rule are generally inconsistent with the payment of large guaranteed cash amounts. BofA proposed that the Covered Employee’s guarantee be restructured into a \$700,000 cash salary, with the remainder delivered as a stock salary with the same terms as the stock salary proposal for other Covered Employees.

Such a restructuring would be consistent with the principle that cash guarantees are generally disfavored, but inconsistent with the Special Master’s conclusion that the cash portion of a Covered Employee’s compensation that is not performance-based generally should not exceed \$500,000. See *Id.* § 30.16(b)(1)(iii). As a result, the proposed restructuring is inconsistent with the Public Interest Standard.

The Special Master has determined that, with respect to this employee, a restructuring of the cash guarantee providing a cash salary of less than \$500,000, with the remainder of the “guarantee” paid as stock salary, would be consistent with the Public Interest Standard. In addition, the Covered Employee’s compensation structures, will also be subject to the limitations described in Parts IV.A.4 (“other” compensation and perquisites), IV.A.5 (non-qualified deferred compensation), and IV.A.6 (severance plans) above.

b. CEO

The CEO has publicly announced his retirement from the Company. In addition, it is anticipated that he will receive a very substantial retirement compensation package consisting of cash, equity and other payments, all agreed upon during the CEO's lengthy tenure with the Company and its predecessors. Accordingly, the Special Master has determined that the payment of any amount of compensation to the CEO for 2009 is inconsistent with the Public Interest Standard.

3. *Departed Employees*

In addition, eleven employees that would have been Covered Employees had 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 II 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, BofA 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 Compensation and Benefits Committee of BofA'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, BofA'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 BofA's performance (notwithstanding full or partial satisfaction of the performance criteria).

In addition, the structures determined by the Special Master to be consistent with the Public Interest Standard include grants of stock in BofA. 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).

BofA must have in effect a policy that would prohibit an employee from engaging in any hedging, derivative or other transactions that have an equivalent economic 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, BofA is required to institute the following corporate governance reforms:

- (1) *Compensation Committee; Risk Review.* BofA must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with BofA's senior risk officers any risks that could threaten the value of BofA. 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 BofA; (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 BofA'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 the Company, 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.* BofA must provide to Treasury an annual disclosure of any perquisite whose total value for BofA's fiscal year exceeds \$25,000 for each of the Covered Employees. BofA 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*. BofA 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. BofA must exercise its clawback rights except to the extent that it is unreasonable to do so. *Id.* § 30.8.
- (5) *Say-on-Pay*. BofA 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*. BofA was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If BofA'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 BofA's Internet website. *Id.* § 30.12.
- (7) *Prohibition on Tax Gross-Ups*. Except as explicitly permitted under the Rule, BofA 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*. BofA's CEO and chief financial officer must provide to the Securities and Exchange Commission written certification of BofA'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 BofA 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, BofA 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 BofA 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 BofA 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: Bank of America Corporation

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.)
1678	\$0	\$0	\$0	\$0
1029	\$500,000	\$1,750,000	\$1,125,000	\$3,375,000
1055	\$403,847	\$5,412,180	\$2,851,923	\$8,555,770
1108	\$412,500	\$1,914,583	\$1,106,250	\$3,318,750
1123	\$300,000	\$4,483,333	\$2,350,000	\$7,050,000
1143	\$500,000	\$9,316,667	\$0	\$9,900,000
1164	\$500,000	\$5,640,000	\$3,001,250	\$9,003,750
1227	\$352,500	\$4,797,917	\$2,526,250	\$7,578,750
1562	\$500,000	\$5,250,000	\$0	\$6,000,000
1564	\$412,500	\$5,114,583	\$2,706,250	\$8,118,750
1714	\$403,847	\$4,612,180	\$2,451,923	\$7,355,770
1787	\$412,500	\$2,114,583	\$1,206,250	\$3,618,750
1850	\$500,000	\$3,950,000	\$0	\$4,700,000

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

2008 Cash decreased by \$89.3M or 94.5%
Total Direct Compensation decreased by \$149.2M or 65.5%

2007 Cash decreased by \$49.8M or 92.2%
Total Direct Compensation decreased by \$112.6M or 63.3%

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 or units 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 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.

3. Chrysler Group, LLC



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 2009

Ms. Nancy Rae
Executive Vice President, Human Resources
Chrysler Group, LLC
1000 Chrysler Drive
CIMS 485-08-96
Auburn Hills, MI 48326-2766

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

Dear Ms. Rae:

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 Chrysler Group, LLC ("Chrysler"). 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 Chrysler'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, a significant portion of each individual'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 Chrysler repays its TARP obligations.

- Base salary paid in cash should not exceed \$500,000 per year, except in appropriate cases for good cause shown.
- Total compensation for each individual must both reflect the individual's value to Chrysler and be appropriate when compared with total compensation of persons in similar positions or roles at similar entities, and should generally target the 50th percentile of total compensation for such similarly situated employees.
- Employees may be eligible to vest in long-term incentive awards if—and only if—objective performance metrics developed and reviewed in consultation with the Office of the Special Master are achieved. All such awards must be payable in the form of restricted stock that will be forfeited unless the employee stays with Chrysler for at least three years following grant and may only be redeemed in 25% installments for each 25% installments of Chrysler'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), Chrysler must adopt policies applicable to these employees as follows:

- The achievement of any performance objectives must be certified by the Compensation and Leadership Committee of Chrysler'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.

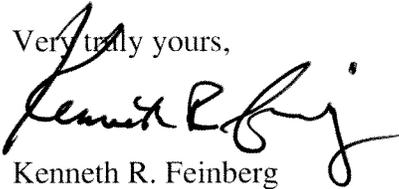
- At least once every year, Chrysler's compensation committee must provide to the Department of the Treasury a narrative description identifying each compensation plan for its senior executive officers, and explaining how the plan does not encourage the senior executive officers to take unnecessary and excessive risks that threaten Chrysler'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 Chrysler's compensation structures:

- *Performance-based compensation.* A substantial amount of approved compensation depends on Chrysler's performance, and ties the financial incentives of Chrysler employees to the overall performance of the Company. Portions 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 Chrysler repays its TARP obligations), the ultimate value realized by the employee will depend on Chrysler'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 Chrysler 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 similarly situated employees of similarly situated companies. Overall, the compensation structures generally provide for total compensation packages that are well below the 50th percentile when compared to such other executive officers and employees. *Id.* § 30.16(b)(1)(ii).

Pursuant to the Interim Final Rule, Chrysler 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 the Chrysler 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: Holly E. Leese, Esquire
Lawrence Cagney, 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.*

Chrysler Group, LLC (“Chrysler” 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 compensation structures apply to five employees that the Company has identified as senior executive officers (the “Senior Executive Officers,” or “SEOs”) for purposes of the Rule, and 20 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 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 Treasury employees working in the Office of the Special Master, conducted extensive discussions with Chrysler officials. During these discussions, the Office of the Special Master informed Chrysler 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 Chrysler 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 Chrysler, certain data and documentary information necessary to facilitate the Special Master's review of the Company's compensation structures. The request required Chrysler to submit data describing its proposals, 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). Chrysler was required to submit competitive market data indicating how the amounts payable under Chrysler's Proposed Structures relate to the amounts paid to persons in similar positions or roles at similar entities. Chrysler 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.

Chrysler 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 Chrysler'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 Chrysler's proposal 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 submissions 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 Chrysler's proposals, 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. Chrysler Proposals

Chrysler provided the Office of the Special Master with detailed information concerning its proposals for the Covered Employees, including amounts potentially payable under the compensation structure for each Covered Employee.

Chrysler supported its proposal with detailed assessments of each Covered Employee's tenure and responsibilities at the Company 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. *Chief Executive Officer*

Chrysler's chief executive officer (the "CEO") also serves as the chief executive officer of Fiat S.p.A, a minority shareholder of the Company. Fiat, according to the Company's submission, has and will continue to provide for the CEO's 2009 compensation, and Chrysler has not proposed to pay him any compensation whatsoever in 2009.

2. *Covered Employees Generally*

Chrysler's proposals for this group of Covered Employees, (which excludes the CEO and three departing employees, who are covered separately below), ranged from \$311,503 to \$719,340 and consisted of three primary components—cash salaries, stock salaries, and annual long-term incentive awards—plus additional payments in the form of "non-qualified deferred compensation" accruals, perquisites, and "other" compensation.

a. Cash Salary

Chrysler proposed increasing the cash salary of these Covered Employees to annualized amounts ranging from \$276,672 to \$603,000. The Company's proposal asserted that cash salaries at such levels could be justified by reference to the compensation of persons in similar positions or roles at similar entities.

b. Stock Salary

Chrysler proposed that these Covered Employees receive 20% of their total salaries going forward as stock salary, in annualized amounts ranging from \$56,000 to \$122,000 on an annual basis. On each regular payroll date, Covered Employees would earn fully vested "deferred phantom units," each representing an equal portion of the Company's equity, which would then settle in two tranches of 50% each on the second and third anniversaries of the grant date, respectively.

c. Annual Long-Term Incentive Awards

Chrysler proposed that these Covered Employees be eligible for annual long-term incentive awards equal to one third of total compensation received from and after September 1, 2009, with total potential values ranging from \$56,001 to \$122,002. Awards would be paid in the form of “long-term restricted stock” with 25% vesting after two years of service and 75% vesting on the later to occur of the second anniversary of the grant date or a public offering by the Company. Actual payment would be made in 25% installments for each 25% repayment of the Company’s TARP obligations.

d. “Other” Compensation and Perquisites

Chrysler proposed payments of “other” compensation, as well as perquisites, to the Covered Employees. These proposed payments varied in value.

e. Non-Qualified Deferred Compensation

Chrysler 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 III above. In light of this review and analysis, the Special Master has determined that both the structural design of Chrysler’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. Chief Executive Officer

Because they are provided by a minority shareholder of the company, the proposals for Chrysler’s CEO and amounts potentially payable under such structures, which would generally be subject to the Special Master’s review and analysis, are instead outside the Special Master’s purview. As a result, the Special Master has made no determination as to whether any payments made or proposed to be made to Chrysler’s CEO are consistent with the Public Interest Standard. 31 C.F.R. § 30.1.

2. Covered Employees Generally

a. 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.” *Id.* § 30.16(b)(1)(v). The Special Master has concluded generally that cash salaries for 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 talent with the need for compensation structures that reflect the circumstances of Exceptional Assistance Recipients

The Special Master made use of the resources described in Part II and concluded that Chrysler’s proposal would generally deliver cash salaries that would place the Covered Executives at or below the 50th percentile of compensation 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 portion of the Covered Employee’s compensation that is not performance-based and should instead be allocated to cash salary should in most cases 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 to be 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.

b. Stock Salary

The Special Master reviewed the amount of stock salary Chrysler proposed to pay the Covered Employees. This review was analogous to the comparative review of proposed cash salaries, described above. The Special Master determined that Chrysler’s stock salary proposal would convey amounts of equity compensation in 2009 that would place the Covered Employees at or below the 50th percentile of compensation provided to 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 Chrysler’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 would not be performance-based over the relevant performance period to provide such a long-term incentive. *See Id.* § 30.16(b)(1)(iv). Instead, such stock salary could incentivize employees to pursue

short-term results instead of long-term value creation by paying excessive benefits to employees for short-term increases in share price. See *Id.* § 30.16(b)(1)(i). Under the Company’s proposal, 50% of stock salary would be redeemable by the employee after two years and the remaining 50% of stock salary would be redeemable after three years, which the Special Master has concluded is an insufficient holding period to provide an appropriate long-term incentive and could result in payments that would be inconsistent with the Public Interest Standard. Accordingly, 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 Chrysler repays its TARP obligations.

c. Annual Long-Term Incentive Awards

The Special Master reviewed Chrysler’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). Although Chrysler’s proposal for the vesting condition for 75% of the annual-incentive awards was based on a substantial goal related to the performance of the Company, *id.*, 25% of the awards required only continued employment for two years. A two-year service requirement does not provide Covered Employees with tailored metrics that encompass individual performance. *Id.* In addition, in light of recently adopted international standards providing that incentive compensation should be payable over a period of three years and the Rule’s requirement that performance-based compensation be payable “over a relevant performance period,” *id.*, the Special Master has concluded that awards of long-term restricted stock should not vest unless the employee remains employed through the third anniversary of grant.

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 Chrysler’s TARP obligations that are repaid.

d. “Other” Compensation and Perquisites

Chrysler 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.

e. Non-Qualified Deferred Compensation

Chrysler 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.

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.

In addition, Chrysler proposed that amounts already accrued by the Covered Employees in 2009 under executive retirement plans be paid out to the employees in January 2010. Such payments would effectively constitute a short-term cash guarantee that is not “performance-based over a relevant performance period,” 31 C.F.R. § 30.16(b)(1)(iv). The Special Master has determined that the proposed timing of the payment of the existing retirement accruals is not consistent with the Public Interest Standard and that modifying the existing retirement accruals to provide for payment on a post-retirement basis would be consistent with the Public Interest Standard.

f. 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 executives do not result in an increase in the amounts payable pursuant to these arrangements.

3. *Departing Employees*

Chrysler has also proposed that three Covered Employees whose employment will terminate prior to December 31, 2009, should receive only continuation of their existing cash salaries until their date of departure. With respect to two of 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.

With respect to the third Covered Employee, who has an annual cash salary of \$2,583,336, the Special Master has determined that, in light of “compensation earned, accrued, or paid” to this employee in 2009, *id.* § 30.16(a)(3), the payment of any additional cash after the date of this Determination Memorandum would be inconsistent with the Public Interest.

V. CORPORATE GOVERNANCE

As noted in Part IV 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, the Company 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) *Compensation Committee; Risk Review.* Chrysler must maintain a compensation committee comprised exclusively of independent directors. Every six months, the committee must discuss, evaluate, and review with the Company’s senior risk officers any risks that could threaten the value of the Company. 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 Company; (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 the Company’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 the Company, 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, Chrysler must provide to Treasury an annual disclosure of any perquisite whose total value for Chrysler’s fiscal year exceeds \$25,000 for each of the Covered Employees. Chrysler 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.* Chrysler 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. Chrysler 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.* Chrysler was required to adopt an excessive or luxury expenditures policy, provide that policy to Treasury, and post it on the Company's website. If Chrysler'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, Chrysler 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.* Chrysler's CEO and chief financial officer must provide written certification of Chrysler'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 Chrysler 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, Chrysler 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 Chrysler 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 Chrysler 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: Chrysler Group LLC

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.)
TRP001	\$0	\$0	\$0	\$0
TRP002	\$500,000	\$34,001	\$102,002	\$644,336
TRP003	\$0	\$0	\$0	\$2,150,000
TRP004	\$485,000	\$197,253	\$0	\$694,756
TRP005	\$485,000	\$105,000	\$107,002	\$626,175
TRP006	\$455,000	\$84,000	\$102,002	\$620,175
TRP007	\$440,000	\$29,334	\$88,002	\$503,169
TRP008	\$435,000	\$29,001	\$87,002	\$463,503
TRP009	\$410,000	\$27,334	\$82,002	\$490,169
TRP010	\$410,000	\$27,334	\$82,002	\$511,003
TRP011	\$410,000	\$27,334	\$82,002	\$511,003
TRP012	\$405,000	\$27,000	\$81,001	\$508,835
TRP013	\$400,000	\$0	\$0	\$391,667
TRP014	\$479,300	\$25,667	\$77,002	\$503,393
TRP015	\$370,000	\$0	\$0	\$365,833
TRP016	\$335,000	\$22,334	\$67,002	\$416,003
TRP017	\$315,000	\$21,000	\$63,001	\$394,835
TRP018	\$315,000	\$21,000	\$63,001	\$357,341
TRP019	\$310,700	\$20,714	\$62,141	\$389,388
TRP020	\$310,000	\$20,667	\$62,002	\$380,169
TRP021	\$295,000	\$19,667	\$59,001	\$369,501
TRP022	\$290,000	\$19,334	\$58,001	\$334,018
TRP023	\$280,000	\$18,667	\$56,001	\$350,501
TRP024	\$280,000	\$18,667	\$56,001	\$350,501
TRP025	\$310,000	\$20,667	\$62,002	\$359,336

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

2008 Cash decreased by \$1.5M or 17.9%
Total Direct Compensation increased by \$2.1M or 24.2%

2007 Cash increased by \$0.9M or 14.0%
Total Direct Compensation increased by \$4.5M or 72.3%

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 units 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 Company's compensation committee. 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.

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.