

PROPOSED SALE IN THE GENERAL MOTORS BANKRUPTCY

June 5, 2009

To Our Clients and Friends:

General Motors completes its first week in bankruptcy having obtained each court order it sought during its first-day hearing Monday evening. The approval of interim debtor-in-possession (DIP) financing from the United States and Canadian governments imposes requirements of rapid progress toward a sale, pursuant to section 363 of the Bankruptcy Code, of GM's assets to a specially created, government-sponsored entity, informally known as "New GM." The largest part of New GM's payment for GM's assets is a credit bid based on the governments' DIP financing. This update focuses on three components of GM's DIP financing and section 363 sale.

TIMETABLE OF THE PROPOSED SECTION 363 SALE

Subject to any higher or better offers, GM proposes to sell most of its valuable U.S. operations to New GM, which will initially be majority owned by the United States government. Judge Gerber assented to an aggressive sale timetable: objections to the sale must be made by June 19; competing bids, if any, are due on June 22; and the sale hearing, at which final court approval will be sought, is scheduled for Tuesday, June 30. The closing of the sale must occur after August 15, but before September 15. Both the DIP financing agreement and the sale agreement between GM and New GM are conditioned on adherence to this timetable.

FINANCIAL TERMS OF SALE AND DIP FINANCING

The U.S. Treasury and the governments of Canada and Ontario have agreed to extend \$33.3 billion in DIP financing to GM. That loan will be treated as an allowed superpriority administrative expense claim in bankruptcy, pursuant to section 364(c) of the Bankruptcy Code. The government's DIP loan to GM is secured by a first lien on a substantial portion of GM's assets. The DIP lenders and GM did not, however, seek to have that lien *prime* liens of existing secured creditors pursuant to section 364(d). Instead, the other senior secured lenders will be paid in full and have waived a portion of their preexisting liens to enhance the security of the government lending.

The proposed purchase price has four components. First, a credit bid of about \$51.3 billion of the \$59 billion GM is expected to owe the governments – as both prepetition and DIP lenders – at the time of sale. Second, 10% of the equity of the resulting New GM. Third,

warrants exercisable for additional new common and preferred equity. Fourth, assumption of certain liabilities. Those liabilities include that portion of the secured government debt that was not credit bid. Also assumed are substantial obligations to employees and suppliers pursuant to assumed executory contracts, including union contracts.

ASSUMPTION OF EXECUTORY CONTRACTS

Unlike the unions and specified core suppliers, whose contracts *must* be assumed under the purchase agreement, many other executory contract counterparties do not presently know what treatment they will receive. The section 363 sale procedures order grants GM and its intended purchaser, New GM, great latitude in the assumption of executory contracts and the curing of defaults under those contracts. GM and New GM have set the deadline for assumption by the purchaser of executory contracts at thirty days following the close of the sale, but retain the right to postpone that deadline if they desire. Prior to that deadline, the purchaser may designate any of the more than 400,000 executory contracts of GM for assumption, and propose a cure amount. Upon notice of such designation, the contract counterparty will have ten days to object or be bound to assumption and any proposed cure amount.

Please feel free to contact us with any questions.

Steven R. Gross
+1 212 909 6586
srgross@debevoise.com

George E.B. Maguire
+1 212 909 6072
gebmaguire@debevoise.com

Michael E. Wiles
+1 212 909 6653
mewiles@debevoise.com