



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

March 24, 2009

B. Robbins Kiessling, Esq.
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019

Dear Mr. Kiessling:

This is in response to your request for a determination that General Motors Corporation (“GM”) would not control GMAC LLC (“GMAC”), both of Detroit, Michigan, under the Bank Holding Company Act, as amended (“BHC Act”), if the actions described below are taken in accordance with certain conditions described in this letter and related correspondence.

GM previously was not subject to the BHC Act because GMAC’s subsidiary insured depository institution, GMAC Bank, Midvale, Utah, was an industrial loan company, and such companies are exempt from the definition of “bank” under the BHC Act.¹ The Board recently approved GMAC’s application to become a bank holding company on the conversion of GMAC Bank from an industrial loan company to a commercial bank.² The Board’s approval and the determination in this letter have been made in light of the unique circumstances surrounding the proposal by GMAC, one of the nation’s largest captive auto finance companies, to become a bank holding company and the actions that GM has committed to the Board to implement in order to reduce its ownership stake and other relationships with GMAC.

GM indirectly controls 49 percent of the outstanding voting interests of GMAC and has four representatives on GMAC’s board of directors. Moreover, GM has controlled GMAC since its formation, and GM and GMAC have been integral to each other’s operations. GMAC provides financing for the vast majority of wholesale and retail purchases of GM automobiles, and the financing of GM automobiles comprises approximately 80 percent of GMAC’s business.

GM has committed to the Board that it will take a number of steps to reduce its ownership interest in, and relationships with, GMAC to comply with the BHC Act and the

¹ See 12 U.S.C. § 2(c)(2)(H). 12 U.S.C. § 1841(c)(2)(H).

² See GMAC LLC, 95 Federal Reserve Bulletin ____ (December 24, 2008) (“GMAC Order”).

Board's precedent for noncontrolling investments in banks and bank holding companies.³ Under the proposal, GM has committed to the Board that GM will reduce its direct ownership interest in GMAC to less than 10 percent of the voting and total equity of GMAC by transferring its equity interest in GMAC above that amount to a trust with an independent trustee by March 24, 2009.⁴ Both the trust document and the trustee must be acceptable to the Federal Reserve System. GM will be the beneficiary of the trust, but the trustee will be independent of GM and will have sole discretion to vote and dispose of the ownership interests. The trustee will be required under the terms of the trust to divest the shares held in the trust within three years from the date the Board approved GMAC's application to become a bank holding company.⁵

GM also will surrender its representatives on GMAC's board of directors. GM and GMAC propose to continue certain of their business relationships through which GMAC provides financing to automobile dealers and consumers who purchase vehicles manufactured by GM. GM and GMAC have agreed to modify their agreements to eliminate restrictions on GMAC's ability to engage in business with others and to remove economic and legal incentives for GMAC to do business primarily with GM. These changes are intended to allow GMAC to diversify its business and to operate without influence from GM, and they are integral to the Board's review of this matter.

In addition, GM has provided other commitments that are similar to those the Board previously has relied on to ensure that an investor is not able to exercise a controlling influence over a bank or bank holding company.⁶

For purposes of the BHC Act, a company controls a bank holding company or bank if the company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank holding company or bank; (ii) controls in any manner the election of a majority of the directors of the bank holding company or bank; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the bank holding company or bank.⁷ The Board's Regulation Y also sets forth several rebuttable presumptions of control.⁸

³ See "Policy statement on equity investments in banks and bank holding companies" ("Policy Statement"). 12 CFR 225.144, available at <http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm>.

⁴ On December 29, 2008, the Department of the Treasury ("Treasury") agreed to loan up to \$1 billion to GM to enable the company to participate in a rights offering of GMAC common equity. As a condition of Treasury's loan, GM will form a second trust and transfer to that trust certain GMAC equity, including the equity interests purchased through the rights offering, that will be pledged to Treasury as collateral for the loan. The trustee of the second trust, which will be appointed by Treasury, also must be independent of GM.

⁵ The Board approved the GMAC application on December 24, 2008.

⁶ See the appendix for a complete list of GM's commitments to the Board.

⁷ 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

⁸ 12 CFR 225.31(d).

Under the proposal, GM over time would cease to control, or hold with power to vote, 25 percent or more of a class of voting securities of GMAC. GM will not control the election of a majority of the directors of GMAC. Although GM will indirectly own the economic interest of 25 percent or more of a class of voting securities of GMAC, as noted, GM will immediately reduce its direct ownership interest in GMAC to less than 10 percent of the voting and total equity of GMAC and will transfer the remaining equity interest in GMAC to a trust with an independent trustee who will be directed to dispose of the shares within three years.⁹ The trustee must be acceptable to the Board and Treasury, will be independent of GM, and will have sole discretion to vote and dispose of the ownership interests. The Board previously has permitted the use of a trust as an interim measure in extraordinary and unusual circumstances when warranted by the public interest to allow an orderly divestiture of shares to conform with the requirements of the BHC Act.¹⁰ In reviewing the use of a trust arrangement in this case, the Board has considered that the divestiture plan is part of a proposal negotiated with Treasury to provide temporary assistance to GM and GMAC. At the end of the three-year divestiture period, GM has committed that it will own and control no more than 9.9 percent of the voting shares and total equity of GMAC, directly or through a trust, which is well below the statutory definition of control in the BHC Act and is consistent with the Board's Policy Statement.¹¹

GM also could be deemed to control a bank holding company or bank under the BHC Act if the Board were to find that GM exercises a controlling influence over the management or policies of a bank holding company or bank. GM has committed that it will not have any representatives on GMAC's board of directors but has requested the right to appoint a nonvoting observer to attend GMAC's board meetings. Consistent with the Board's Policy Statement, GM may appoint an observer to attend those meetings. The observer would have no voting rights, and neither GM nor its nonvoting observer would be in a position to exercise any veto rights or other controlling influence over the management or policies of GMAC as a result of the observer's presence at the board meetings.

⁹ GM and the trust will hold both voting securities and nonvoting preferred securities of GMAC. GM has represented that the preferred securities held by GM and the trust are not convertible into voting equity of GMAC and are nonvoting within the meaning of Regulation Y.

¹⁰ See Board letter to Steven M. Plevin, Esq., June 26, 2000. Under section 2(g)(2) of the BHC Act (12 U.S.C. § 1841(g)(2)), shares held for the benefit of a company are deemed to be controlled by such company unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of the act.

¹¹ 12 CFR 225.144. The Board previously has found that a company that controlled another company for a significant period is likely to be able to exert a controlling influence over the company even after a substantial divestiture. As a result, the Board generally has required that the controlling company divest to below 5 percent of the voting equity of the company and permitted only minimal ongoing business relationships between a former controlling company and the controlled entity. See "Statement of policy concerning divestitures by bank holding companies". 12 CFR 225.138. The commitments GM has made to limit its ongoing relationship with GMAC should prevent GM from using its historical control position to continue to exert a controlling influence over GMAC.

With respect to their continued business relationships, GM and GMAC have committed to the Board to modify their agreements to eliminate restrictions on GMAC's ability to engage in business with others and to remove economic and legal incentives for GMAC to do business primarily with GM. Under the amended agreements, GMAC will have no obligation to lend to a particular wholesale or retail customer, nor will it be required to pay a penalty or receive lower payments or incentives for refusing to lend to a customer or for failing to meet individual or aggregate lending targets. Because GMAC will have no lending obligations to GM, it will be entirely free to set its own pricing and underwriting standards.

The agreements also will be modified to eliminate the requirement that GMAC meet certain lending and underwriting targets in order to remain the exclusive underwriter of special promotional loan programs offered by GM. For a period of five years, GM will offer GMAC the right to finance these special programs for retail consumers, but this provision will limit only GM's ability to use a party other than GMAC for its retail promotional programs.¹² The exclusive arrangement with respect to promotional programs for GM dealers will be eliminated entirely.

Although loans related to GM will remain a significant portion of GMAC's total lending business, GMAC will be free to make loans to any third party and will use its own underwriting standards in making loans, including those related to GM. [

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Based on the facts of this proposal, the unique circumstances surrounding the transition of GMAC to a bank holding company, and the commitments that GM has made to the Board, the Board would not deem GM to control GMAC for purposes of the BHC Act based on the structure of this proposal.¹⁴ As noted, the Board has considered the unique facts of this case in reaching this conclusion, and in particular, the fact that this proposal is part of a restructuring of

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¹³ GM and GMAC have committed to the Board (1) to revise the agreements, in accordance with these proposed revisions, by March 24, 2009; and (2) to operate in accordance with such proposed revisions, as represented to the Board, on consummation of the proposal and until the agreements are formally revised, including by granting waivers for compliance with current requirements that conflict with such proposed revisions.

¹⁴ GM will continue to be treated as an affiliate of GMAC Bank, however, for purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. §§ 371c and 371c-1) until GM owns, directly or as beneficial owner of equity held in trust, less than 10 percent of the voting or total equity of GMAC.

the businesses of GM and GMAC in connection with a proposal negotiated with Treasury to provide temporary assistance to GM and GMAC.

The Board's determination is specifically conditioned on compliance with all the commitments and conditions discussed in this letter and the GMAC Order. The commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law. Any change in the facts presented could result in a different conclusion and should be reported immediately. If you have any questions about this matter, please contact Andrea Tokheim, Counsel (202-452-2300), or Pat Robinson, Assistant General Counsel (202-452-3005), of the Board's Legal Division.

Sincerely yours,

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

Attachment

cc: Federal Reserve Bank of Chicago
Federal Deposit Insurance Corporation

Appendix

Commitments of GM to the Board

Transitional Commitments

GM commits, in connection with the Board's determination of noncontrol, that:

- i. within 90 days of the Board's approval of the Board's approval of GMAC's application under section 3 of the BHC Act to become a bank holding company ("Application"), GM will reduce its ownership interest in GMAC to less than 10 percent of the voting and total equity of GMAC;
- ii. any shares or other equity interests in GMAC that GM owns or controls in excess of the amount described above will, within such 90-day period, be transferred to a trust that will divest all ownership in GMAC within a period of three years after the Board's approval of the Application (the "Divestiture Period"). The trustee and trust agreement must otherwise be acceptable to the Federal Reserve System, and the trustee must be independent of GM.¹⁵ Such trustee shall have the sole voting and dispositive authority over the shares held by the trust, subject only to arrangements satisfactory to the Federal Reserve System in favor of the UST pursuant to which such shares may be pledged to UST to secure certain extensions of credit by UST to GM. GM further commits that the trust agreement will provide, among other things, that the trustee sell or otherwise dispose of any such undivested ownership interest in GMAC at the end of the Divestiture Period, in a transaction or transactions otherwise acceptable to the Federal Reserve System; and
- iii. [

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¹⁵ Any equity interests pledged to the United States Treasury ("UST") may be placed in a separate trust with a UST-appointed trustee.

Passivity Commitments

GM will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of GMAC or any of its subsidiaries;
2. Have or seek to have any representative of GM and its subsidiaries (the “GM Group”) serve on the board of directors of GMAC or any of its subsidiaries, except that GM will be permitted one nonvoting observer at meetings of the board of directors of GMAC;
3. Have or seek to have any employee or representative of the GM Group serve as an officer, agent, or employee of GMAC or any of its subsidiaries;
4. Take any action that would cause GMAC or any of its subsidiaries to become a subsidiary of GM;
5. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of the GM Group own, control, or hold with power to vote) represent 10 percent or more of any class of voting securities of GMAC or any of its subsidiaries;
6. Own or control equity interests that would cause the combined voting and nonvoting equity interests of the GM Group and its officers and directors to equal or exceed 10 percent of the total equity capital of GMAC or any of its subsidiaries;
7. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of GMAC or any of its subsidiaries;
8. Enter into any agreement with GMAC or any of its subsidiaries that substantially limits the discretion of GMAC’s management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
9. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of GMAC or any of its subsidiaries;
10. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of GMAC or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by GMAC or any of its subsidiaries; or

11. Enter into any banking or nonbanking transactions with GMAC or any of its subsidiaries, except that the GM Group may continue to maintain business relationships between it and GMAC and its subsidiaries, [

] under which

(i) GMAC will be able to deal with any third party without limitation, (ii) GM will have no influence over the underwriting terms and processes of GMAC, (iii) the relationship between GM and GMAC will not be exclusive, unless any such exclusivity is specifically negotiated, at arm's-length, by GMAC, and (iv) GMAC will be free of any business volume or penetration targets, and monetary or other penalties related to any such target, during the course of the Divestiture Period.

The terms used in these commitments, including without limitation, the term "subsidiary," have the same meanings as set forth in the BHC Act and the Board's Regulation Y.