

GM UPDATE
June 10, 2009

As to participating dealers, the original agreement should be signed and returned so it arrives on June 12th. Send them to the GM address on the original packet. You should have received or will shortly receive a letter of clarification and amendment to the participating dealer agreement. In all probability, there will not be any additional sweeteners. The clarification letter may be signed and returned now if you have received it. If not, it should be returned by June 15th.

We are somewhat ambivalent about the changes and in a memo that we have prepared, we will share those with you. The memo is as follows:

MEMO REGARDING
GM “CLARIFICATION” LETTER
June 9, 2009

We have received an advance draft of GM’s proposed clarification letter and Amendment to the Participation Agreement. This only affects “going forward” dealers. There is no change so far in the wind-down agreements. With regard thereto, we have the following comments:

1. With regard to GM’s assertion that they have received ? signed Participation Agreements indicating broad dealer support for their objectives, one must place that in the context that those received thus far were garnered as a result of “gun to the head” tactics. It was simple: either sign the Participation Agreement or get rejected in bankruptcy and receive nothing, or perhaps even worse, receive a wind-down agreement.
2. GM states they want to clarify points and amend certain terms. As we will see, the amendments are largely worthless and in our view, do not substantially improve the agreement as a whole.
3. Paragraphs 1, 2 and 3 are largely self-serving, contain no legal benefit to the dealer and simply reinforce GM’s ability to strong-arm the dealer with regard to sales targets and inventory. Paragraph 1 is simply a restatement in more of layman’s language of GM’s position in the Participation Agreement. As to paragraph 2 and how that might play out, be aware that Chrysler dealers going forward have now been contacted by Chrysler reps and dealers think Chrysler’s sales expectations are unreasonably high. In one case, the expectations levied upon the remaining dealers in a particular market area exceed substantially the performance of the other now defunct dealers in the market area. They also have substantially raised working capital requirements. GM will raise working capital requirements to match sales standards. One question would be will GM allow dealers to “ease into” new working capital standards as the market presumably improves? They state that they expect increased sales expectations to be implemented in the second half of 2010 or 2011. This, of course, is perilously close to the franchise expiration set to take place October 31st, 2010. Under the Participation Agreement, a

dealer who is not going to be renewed for whatever reason will still be significantly impaired. Paragraph 3 simply talks about inventory needs being matched to sales performance requirements. If the dealer is not totally up to snuff for whatever reason in meeting or exceeding sales expectations, then the dealer must “work diligently” to address the situation. If the issue is product availability, on the other hand, GM will work with the dealer to “try to address that issue”. It seems that this is a bit of a one-way street.

4. Paragraph 4, as to exclusivity, does not really change the fail-safe date of removing non-GM brands by December 31, 2009. They say that they retain the right to require certain markets to have exclusive GM facilities but will work with the dealer “reasonably” to determine the need for exclusivity and any extension on the agreed date. One might rationally conclude that a very small market dealer (if any are left) might be allowed to continue to dual. As to meeting the dates for exclusivity, one might reasonably conclude that they could attempt to enforce this by giving short-term franchise agreements instead of renewing franchise agreements for what has been, but may not be, the five-year term. Again, there is a reasonability standard and of course, GM’s standard of reasonability and the dealers might be entirely two different things. It is interesting, however, that in the Amendment, they have expanded the exclusivity requirements. Instead of just removing non-GM operations from the premises, the new stipulation calls for a meeting to “reasonably determine and mutually agree” (it will be interesting to see how mutually agreed is interpreted) whether or not and to the extent which the non-GM dealer operations may continue on the dealership premises other than in the GM showroom. From a practical standpoint, we don’t believe that that amounts to much of a concession.

5. Also in paragraph 4, as to the exclusivity only, GM is restoring the right under 13.2 to a six-month Notice to Cure. This applies only to premises exclusivity. 13.2 currently applies only to failure of performance. After the expiration of the six-month cure period, they are free to give the dealer 90 day notice of termination.

6. Paragraph 5, again, doesn’t amount to much of a modification in terms of waiving dealer rights. It simply reinstates a very limited protest right if the proposed new site is within the existing dealer’s Area of Primary Responsibility, or presumably within six miles. Any dealer pursuing those rights would have to avail themselves of existing state law and probably incur the expenses of an expert statistical fight.

7. Paragraph 6 has perhaps what is the greatest modification. GM is deleting paragraph 8 of the Participation Agreement, which had required the dealer to waive part of the facility assistance and state law regarding a grant of a new franchise agreement to be offered in October of 2010. What it does not do is state that any replacement agreement will not contain terms similar to paragraph 8. I know they would like dealers to “trust” them but under this arrangement, they would simply have to live with state law until 10/31/10; however, **no** promise is made as to what the new franchise agreement coming out in 2010 will attempt to do with regard to dealer state law rights.

8. With regard to paragraph 7, they’ve misquoted. The appropriate article is 17.12 and not 17.2. Since Michigan’s dealer rights laws require the location of the dealership to be in

the state of Michigan, Michigan would not apply to the dealer rights section but simply to interpretation of other elements of the contract, such as potential breach, litigation and discovery disputes, etc. Again, there is no guarantee that this will extend to the new franchise agreement to be executed in October, 2010.

9. They are pushing back the date to return the Participation Agreements and the letter agreement until June 15th.

As of this writing, I do not know whether this will be the final letter that is sent to dealers.