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Submitted via electronic mail to director@fasb.org

Re: File Reference: No. 2013-270, Exposure Draft: *Leases* (Topic 842)

Dear Sirs:

General Motors Company (“GM”) designs, builds and sells cars, trucks and service parts and, with its partners, produces vehicles in 30 countries. GM has leadership positions in the world’s largest and fastest-growing automotive markets. More information on GM and its subsidiaries can be found at <http://www.gm.com>. GM appreciates the opportunity to provide feedback on the Proposed Accounting Standards Update (Revised), *Leases* (Topic 842) (the “Proposed ASU”) that reflects decisions made by the Boards pertaining to the accounting for leases.

On behalf of GM, we strongly support the overall goals of the Boards’ joint leasing project and the convergence of U.S. GAAP and IFRS, including the on-balance sheet recognition of assets and liabilities related to all leasing transactions and the simplification of existing GAAP. As discussed in our letter dated May 15, 2012 titled “Lease Re-Deliberation Activities”, GM continues to believe that a single lessee accounting model for all leases with the limited exception of short-term leases is preferable. We also believe that lessees should be required to apply an approach similar to the Type A model outlined in the Proposed ASU for all leases as this method best captures the true nature of leases which inherently all contain a financing element. Many constituents – like GM – have expressed a preference for a single lessee accounting model. However, significant disagreement exists as to what should be that model. This is further complicated by the fact that valid conceptual arguments can be made supporting either the method used for Type A leases or the method used for Type B leases, as well as other methods

not included in the Proposed ASU. Despite these facts, we strongly recommend that in order to reduce complexity in reporting, the Boards should select one of the two proposed income statement accounting approaches to preserve an important objective of the project, which is to create a single lease accounting model for lessees. We believe the elimination of a need for a classification assessment will greatly improve the cost-benefit considerations of the Proposed ASU.

Though we support a single lease accounting model for lessee, and not the proposed dual model contained in the Proposed ASU, we are supportive of many aspects of the lease project, including the following decisions reached by the Boards:

- 1) The alignment of the assessment of whether a contract gives the lessee the right to control the specified asset with the concept of control developed as part of the project on revenue recognition. Accordingly, a contract would be deemed to convey the right to control the use of an identified asset if the customer has the ability to direct (i.e., power criterion) and derive benefits from (i.e., benefits criterion) the use of that asset. We believe this is a significant improvement over existing guidance that can give rise to a lease when substantially all of the output is taken and the contract is priced in a certain manner. Existing guidance, in our opinion, inappropriately concludes an entity had more rights than merely purchasing services.
- 2) The removal of paragraph 350-40-25-16 requiring an analogy to Subtopic 840-10 to be made to determine the asset acquired in a software licensing arrangement for internal-use software. We believe such arrangements have unique aspects that make them different than a typical lease arrangement such that these transactions do not easily fit into a lease accounting model. We believe this scope exception should continue in any future revisions to the Proposed ASU.
- 3) The inclusion of an option for lessees to make a policy election not to apply the requirements in Subtopic 842-20 for short-term leases but to instead recognize the lease payments in profit or loss on a straight-line basis over the lease term and the inclusion of the same option for lessors in Subtopic 842-30.
- 4) The elimination of the concept of “build-to-suit” leasing transactions and the removal of requirements related to the lessee accounting for an asset under construction.
- 5) The ability to apply a modified retrospective approach in comparison to a requirement to apply the Proposed ASU retrospectively.

While we support many of the conclusions within the Proposed ASU and believe the current proposal represents an improvement over the model proposed previously in the first exposure draft (2010), we believe the Boards should consider the following items:

- 1) The need to clarify the application of the proposed leasing model to product sales with repurchase agreements (particularly in light of the revenue recognition guidance about to be issued) such that the overall principles in the Proposed ASU and its linkage to the revenue project are clear. We believe additional clarity in principles of the model is also

needed to avoid a risk that a costly mixed-attribute lease model would need to be applied to sales with repurchase agreements.

- 2) The need to clarify the principles related to separating components of a contract (i.e., lease and nonlease elements, for example “free” maintenance) in transactions whereby a manufacturer recognizes a sale of a product and its captive finance subsidiary subsequently reacquires the product.
- 3) The costs associated with the need to perform ongoing reassessment and remeasurement of lease assets and liabilities to reflect revisions to the estimated lease term and variable lease payments in comparison to the benefits achieved.
- 4) The benefits of permitting a company to “grandfather” existing leases to exclude (1) leases outstanding at the initial application date which expire prior to the effective date of the Proposed ASU and (2) operating leases that have less than 12 month remaining on their term at the initial application date.
- 5) Whether the acquisition of a right of use asset in exchange for a liability should be disclosed as a supplemental non-cash transaction as contemplated in the Proposed ASU or whether it should be considered a cash flow equivalent.

These items are discussed in further detail below.

Application of the Proposed Leasing Model to Product Sales with Repurchase Agreements

We recommend the Boards clarify the principles relative to the application of the lease classification model to sales with repurchase agreements that are accounted for as leases such that the concepts surrounding these principles are clear in the final standard. We believe such clarity would strengthen the linkage between the revenue recognition project that requires sales with certain repurchase arrangements to be accounted for as leases in accordance with Topic 840 and the requirements of the Proposed ASU. Also, as discussed further below, we believe additional clarity is warranted to ensure consistent application of the lease classification guidance and to prevent leaving application of the model open to interpretation and diversity in practice.

GM enters into a significant number of vehicle sales each year with certain customers that include the right to put the vehicles back to GM. The agreements typically provide a put right to the customer that can be exercised for a period up to a maximum of 12-24 months; however, the put right cannot be exercised by the customer during the first six months of the agreement. After the initial six month period, there is a contractual price that GM will pay for each vehicle that varies primarily based on the date of return, vehicle mileage and condition. The amount guaranteed to the customer decreases over time, upon the increase in mileage and/or upon the deterioration of the condition of the vehicle. There are significant economic incentives built into the contractual prices at which the vehicles can be put to GM; as a result, the put is exercised for approximately 90 percent of the vehicles. The average time the customer uses the vehicles before putting them back to GM is eight months. GM has historically accounted for these arrangements as operating leases in accordance with paragraphs 840-10-55-12 through 25. The difference between the sales price and the estimated price to repurchase the vehicle is

considered for accounting purposes to be the amount paid by the customer to use the vehicle. This amount is recognized as rental income on a straight-line basis over the estimated period the vehicle will be used. The vehicles remain on GM's balance sheet and are depreciated to their estimated residual value to the extent it falls below cost.

We believe GM would continue to account for vehicle sales with repurchase agreements as leases in a manner similar to current practice when applying the guidance in the revenue recognition project and the Proposed ASU to our fact pattern. Because the average period the vehicle is used before being effectively put to GM is for an insignificant part of the total economic life of the vehicle, we believe the lease would be classified as a Type B lease pursuant to paragraph 842-10-25-6 despite the fact the underlying asset is not property. However, we are concerned this conclusion could be called into question when considering paragraph 842-10-25-8 in the Proposed ASU, in that it requires that a lease should be accounted for as a Type A lease despite the guidance in paragraph 842-10-25-6 if the lessee has a significant economic incentive to exercise an option to purchase the underlying asset. While we believe the customer presumed to be a lessee in this situation has a significant economic incentive to put the vehicle back to GM, not a significant economic incentive to purchase the vehicle, the fact remains that the customer has already purchased the underlying vehicle and historical evidence exists that some vehicles will not be returned.

Typically we experience approximately a 10 percent retention rate by the customer, generally because changes in the vehicle status take place that nullify the put, such as significant vehicle damage, abuse of the vehicle, excess mileage, etc. As such, the significant economic incentive present at inception of the agreement no longer exists due to developments occurring subsequent to signing the agreement. This fact pattern might lead to a conclusion by some that the lease should be classified and accounted for either as an outright sale or a Type A lease because the lessee already owns the underlying asset. We do not believe this is the appropriate application of the guidance in the Proposed ASU and believe it is reasonable to conclude paragraph 842-10-25-8 doesn't apply in our fact pattern because the customer/lessee doesn't have a significant economic incentive to purchase the underlying vehicle; rather, the customer/lessee has a significant economic incentive to put the vehicle to GM.

While our interpretation is reasonable, we believe the Boards should provide clear principles relative to this specific fact pattern. As such, we recommend that the wording in paragraph 842-10-25-8 of the Proposed ASU stating that "...a lease is classified as a Type A lease if a lessee has a significant economic incentive to exercise an option to purchase the underlying asset" should be revised to "...a lease is classified as a Type A lease if a lessee has a significant economic incentive to exercise an option to purchase the underlying asset; *however, a sale with a repurchase agreement giving rise to an unconditional obligation to repurchase the asset at the customer's request that otherwise meets the requirements in paragraphs 842-10-25-6 through 25-7 because of a customer's 'significant economic incentive to exercise its right' to require an entity to repurchase an asset would not be construed to be a significant economic incentive to exercise an option to purchase the underlying asset*" to avoid possible misinterpretation in practice.

An additional concern we have relates to the fact that some may reasonably conclude that because 10 percent of the vehicle sales with a repurchase agreement are ultimately not put back to GM, a mixed-attribute model resulting in some transactions being accounted for as Type A leases and some accounted for as Type B leases should be applied despite the existence of what

we believe is a significant economic incentive to effectively put all the vehicles under the program to GM. GM currently considers vehicles that are not put back within the average eight month usage period to be effectively lease extensions in accordance with existing paragraph 840-10-55-17. Those that are never put back to GM are considered lease extensions until the put is nullified or it expires. Once the put is nullified or expires, the vehicle sale is complete, and any remaining amounts are recognized as though the customer/lessee exercised an option to purchase the vehicle. We believe our current accounting would remain unchanged under the Proposed ED so long as all the leases are considered Type B leases. We believe additional clarity is also important to avoid a conclusion that the estimate of those sales for which the put right is not exercised should be classified as Type A leases provided the vehicle has already been sold to the customer and empirical evidence exists that some vehicles will not be put back to GM. The requirement to apply a mixed-attribute model would be difficult from an operational standpoint. Again, we recommend that the Boards clarify application of the principles in the Proposed ASU to avoid practice interpretations requiring a costly mixed-attribute model to be applied.

Overall, this remains a very important issue for GM in light of the high number of vehicles that are sold through these programs annually. These transactions tend to be geographically diverse with minor fact pattern differences resulting from local laws and customs, but the transactions are in-substance the same. Application of the Proposed ASU to this fact pattern that results in a change in current practice (absent the Boards adopting a single lessee accounting model), such as classification of some sales as Type A and some as Type B, or all as Type A leases subject to remeasurement when they vary from the estimated lease term would, in our opinion, be flawed theoretically and cumbersome and costly to operationalize. To that end, we encourage the Boards to consider our recommendations to clarify the principles within the Proposed ASU to avoid different interpretations.

The discussion above is based on our understanding that the Boards in the revenue recognition project confirmed that the existence of a guarantee would not preclude the transfer of control of the product to the customer such that the sale of a good to a customer with a guarantee that the customer will receive a minimum amount upon resale is subject to the guidance on revenue recognition. However, this view was predicated on the belief that the two scenarios (sales with repurchase agreements and sales with a residual value guarantee) are economically different as noted in the IFRS Staff Paper issued the week of January 28 2013. In that paper, the staff's view was that the two transactions were quite different in terms of the economics; however, we continue to believe that the economics would function similarly under either scenario, in that both of the transactions can inherently be structured to motivate the customer to sell the vehicle after a few months and purchase new vehicles, such that the cars in use remain relatively new. As such, the residual value guarantee would be set at essentially the same amount above the estimated selling price of the vehicle in order to provide an economic incentive for the customer to sell the vehicle to collect on the favorable residual value guarantee. Thus, to say the customer is not encumbered in its ability to utilize the asset or enjoy substantially all the remaining benefits of the asset when a residual value guarantee is provided is not entirely accurate. Whether an entity sells the vehicle to collect on the residual value guarantee or the vehicle is put back to the seller, the economics used to motivate the seller to do so are essentially the same.

Thus, we believe that the Boards' discussion surrounding whether an entity effectively controls the remarketing and retains control over the asset is important when considering whether the

transaction should be accounted for as a lease, provided the customer has a significant economic incentive to effectively put the asset back to the seller. In our opinion, distinguishing between a residual value guarantee and a repurchase agreement is likely to hinge on the level of control over the asset either through the remarketing process or outright reacquisition of the asset. Accordingly, we recommend consideration be given to ensuring clear principles exist within both standards to permit a determination to be made whether the terms of an agreement constitute a sale subject to a guarantee that the customer will receive a minimum amount upon resale in comparison to a transaction containing effectively a put option as the Boards complete both of its projects on revenue recognition and leases. GM's transactions generally require that the vehicle immediately be sent to auction and sold as a used vehicle once the customer has completed its desired usage of the asset. GM may or may not take title to the vehicle depending on the program and geographic location; however, vehicles are generally sold shortly after being put to GM. We believe these terms are most appropriately construed to give rise to a put obligation. However, we believe it is common for entities in similar arrangements to retain some level of control over the remarketing process in order to mitigate losses on the residual value guarantee by requiring the customer or the remarketing company to sell the vehicles in an orderly fashion to lessen the financial exposure.

As such, it is currently not clear to us what level of involvement, if any, would constitute a sale with a repurchase agreement in comparison to a sale with a residual value guarantee. Given the accounting is significantly different and could be changed by altering the structure of the arrangements, we believe it is imperative that the Boards provide clear principles that clearly differentiate between the two fact patterns. In summary, we recommend that the Boards ensure clear principles exist that differentiate transactions that constitute a sale with a residual value guarantee pursuant to Topic 605 and those that constitute a sale with a repurchase agreement pursuant to Topic 840.

Separating Components of a Contract

It is our understanding that the Boards confirmed during their re-deliberations of the revenue recognition project that the repurchase of a good by an entity subsequent to the customer obtaining control of that good does not constitute a repurchase agreement such that a sale of a vehicle by an OEM to its customer can be recorded despite the fact that the OEM's captive finance subsidiary may subsequently repurchase the vehicle subject to a lease so long as certain conditions are met. The terms of sale with the OEM's customer, the dealer, often will give rise to separate distinct performance obligations typically consisting of the vehicle itself and other services meant to function as sales incentives such as "free" maintenance. The OEM will account for each item separately.

The Proposed ASU requires that if an entity determines that a contract contains a lease, a lessor is required to separate any nonlease components (e.g., services) from the leasing components. Specifically, paragraph BC 116.d. of the Proposed ASU states:

"In the Boards' view, a lessor should always be able to separate payments made for lease and nonlease components because it would need to have information about the value of each component, or a reasonable estimate of it, when pricing the contract."

We are concerned that one could interpret the Proposed ASU coupled with the separation guidance contained in the Boards' revenue recognition project to require a captive financing subsidiary to separate the vehicle lease from the service component (e.g., "free" maintenance) upon acquisition of the vehicle subject to the lease agreement and account for each element separately when its OEM parent provides "free" maintenance or other services for a defined period of time. These concerns are compounded based on additional wording contained in the Proposed ASU regarding the separation of nonlease components that states the following:

"BC112. Many contracts contain both lease and nonlease (service) components, such as a contract for a car lease that is combined with maintenance services."

In the above fact pattern, we do not believe it is appropriate to require separation of any elements associated with the reacquired asset subject to a lease when the lessor is functioning solely as a financier of the transaction with the retail consumer and not as the primary obligor to the lessee of any potential nonlease components. Also, absent further clarity in the Proposed ASU we are concerned that diversity may arise in practice among captive finance subsidiaries and independent lessors provided independent lessors will, for all practical purposes, not be aware of other possible elements to a transaction because they do not have the same level of visibility into the accounting for the original sales that an OEM maintains.

In considering the accounting associated with this fact pattern, we do not believe separation of any possible nonlease elements by the captive finance subsidiary is warranted because the captive finance subsidiary does not provide the service, is not obligated to perform the service, and the service obligation of the OEM effectively passes through the captive finance entity to the lessee with the captive finance subsidiary's sole involvement being the financing of the total purchase price of the combined asset and services. The captive finance subsidiary is not involved in the pricing of the nonlease elements and prices the contract based upon the total agreed-upon price by the retail consumer and in no way considers the "free" maintenance separately in determining the pricing. In many cases the captive finance entity would not have insight into the "free" maintenance related to the vehicle absent information requests from the OEM parent.

Furthermore, provided the Boards' conclusion to permit recognition of the original sale of the vehicle to the OEM's customer, we do not believe it is appropriate to require (1) the captive finance subsidiary to record a prepaid service contract upon reacquisition that requires elimination in consolidation or (2) the OEM parent to eliminate any deferred revenue recorded in the initial – albeit uncompleted – transaction as a result of the reacquisition of the vehicle subject to a lease. We believe that as the primary obligor, the OEM should continue to recognize the performance obligation subsequent to reacquisition by its captive finance subsidiary. We are concerned that absent additional clarity in the Proposed ASU one could infer the need to separate the service element (e.g., "free" maintenance) from the lease element upon reacquisition by the captive finance entity that would give rise to the aforementioned complexities both on a standalone basis and in consolidation.

We recommend that clear principles be provided in the Proposed ASU with respect to what the Boards are intending with respect to a lessors' separation of nonlease components for circumstances similar to those described above and the Proposed ASU be changed to clarify that separation is not warranted in these circumstances. We believe such principles are necessary to

ensure there is not diversity in practice among captive finance entities and independent lessors, or in the way these provisions are implemented in practice.

Other Issues

Ongoing Reassessment and Measurement of Certain Leases – We believe the costs of applying the Proposed ASU’s provisions pertaining to ongoing reassessment and measurement would be costly and onerous to apply to achieve what we perceive as little in the way of benefit for financial statement users. As such, we strongly encourage the Boards to consider alternatives to the proposed ongoing reassessment and remeasurement guidance contained in the Proposed ASU for both lessees and lessors to achieve a better balance between the cost-benefit of such provisions. This is especially true for changes in lease payments based on an index or rate. Along these lines, once the initial lease term is defined we also believe rights relating to extension or termination options should not be included in any subsequent remeasurement until they are exercised. This will greatly simplify reporting.

The ongoing reassessment and remeasurement criteria will require systems and processes to be developed to implement the guidance, and will require continuous monitoring of the need for reassessment that will significantly add to the cost of implementation and ongoing operations with little impact or benefit. GM has a significant portfolio of lease contracts from both the lessee and lessor perspective that could be subject to this guidance. Additionally, a change in lease term would trigger a reassessment of the discount rate which would lead to both complexity and volatility in the accounting. This volatility could impact a company’s financial position and operating results, its financial forecasting, as well as debt covenant compliance in ways that are inconsistent with the underlying economics in most cases.

Based on the above, we recommend the Boards change the Proposed ASU to conform lease reassessment and measurement to the “set it and forget it” model used currently. We recognize this viewpoint is primarily driven by a desire to simplify the reporting and reduce overall complexity versus being based purely in theory. However, we would recommend that the Boards require information on potential future options and changes in variable payments in the disclosures relating to lease contracts in lieu of including such amounts in actual measurements in order to adequately balance the cost and complexity of requiring ongoing remeasurement while still addressing theory-related considerations.

Transition Guidance – The Boards did not elect to “grandfather” existing leases to exclude leases outstanding at the initial application date which expire prior to the effective date of the Proposed ASU. The Boards also did not include transition relief for current operating leases that have less than 12 month remaining on their term at the initial application date unless the lease meets the definition of a short-term lease as defined in the Proposed ASU and the company makes a policy election to exempt short-term leases. The decision not to “grandfather” certain leases will require companies to conduct additional data gathering which would take considerable time and effort without adding much value to the users of the financial statements. We recommend that the Boards consider providing additional transitional relief pertaining to leases expiring between the initial application date and the effective date of the Proposed ASU.

Statement of Cash Flows Considerations – As noted in our letter dated May 15, 2012 regarding “Lease Re-Deliberation Activities”, we continue to encourage the Boards to reconsider certain

aspects of the presentation of leasing activities in the statement of cash flows. The following is an excerpt from our prior letter in which we encourage the Boards to continue to give consideration:

“...we do not believe that the acquisition of a right-of-use asset in exchange for a liability to make lease payments should be disclosed as a supplemental noncash transaction. We recognize that this presentation is consistent with the current guidance in paragraph 230-10-50-4 that indicates “obtaining an asset by entering into a capital lease” is an example of a noncash investing and financing transaction. We believe such treatment should be revised. Because of the inherent financing element in a leasing transaction, we believe obtaining a right-of-use asset in exchange for a liability should be treated as cash flow equivalents in the body of the statement of cash flows. Merely disclosing this activity as a noncash transaction results in a significant understatement in the amounts being presented as capital expenditures in the body of the statement of cash flows. Presenting such activities as cash flow equivalents also aligns with the fact that in a lease arrangement the lessee is acquiring a right-of-use asset that it pays for over time. The accounting for such a transaction should be similar to the accounting for the purchase of an asset and give rise to a capital expenditure reflected in the statement of cash flows. In managing our capital structure, we include capital leases in our capital expenditures and believe our external reporting requirements should align with this treatment.”

We believe the comment above remains relevant with regard to the accounting for Type A leases. Furthermore, we believe the above comment becomes even more relevant should the Boards’ re-deliberations process on the lease project revert back to a single lease model for lessees that is more closely aligned to the Type A model contained in the Proposed ASU.

Again, we appreciate the opportunity to provide the Boards with comments and appreciate the Boards’ consideration of the points outlined in this letter. I am available to discuss this letter at the Boards’ convenience and would welcome the opportunity to participate in any outreach to be conducted by the FASB and IASB Staff during their re-deliberation activities. Should you have any questions or need to discuss this letter, please contact me at (313) 667-3434.

Sincerely,

/s/ THOMAS S. TIMKO

Thomas S. Timko
Vice President, Controller, and Chief Accounting Officer
General Motors Company