

FEDERAL RESERVE BANK *of* NEW YORK

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MICHAEL HELD

GENERAL COUNSEL AND
EXECUTIVE VICE PRESIDENT

May 12, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Exemptive Relief from the Prohibition on Arranging Certain Credit Under Section 11(d)(1) of the Securities Exchange Act of 1934

Dear Ms. Countryman:

The Federal Reserve Bank of New York (“New York Fed”) hereby requests relief from the U.S. Securities and Exchange Commission (the “SEC”) under Section 36 of the Securities Exchange Act of 1934 (the “Exchange Act”) from the prohibition on arranging certain credit contained in Section 11(d)(1) of the Exchange Act. Specifically, such relief is requested to permit all brokers and dealers registered with the SEC and designated by the New York Fed as “TALF Agents”¹ to participate in the Federal Reserve’s 2020 Term Asset-Backed Securities Loan Facility (“TALF 2020”) by facilitating extensions of non-recourse credit, on behalf of a special purpose vehicle (the “TALF SPV”) established by the New York Fed, to purchasers of new issues of asset-backed securities (“ABS”) that are or that may be designated as “eligible collateral” in the distribution of which such TALF Agents may have participated as member of a selling syndicate or group within the meaning of Section 11(d)(1).

¹ To expedite the implementation of TALF 2020, the “TALF Agents” will initially consist of the brokers and dealers that act as primary dealers in government securities. Primary dealers in government securities are those institutions that have been selected by the New York Fed to act as trading counterparties in the execution of the New York Fed’s open market operations to carry out monetary policy. In general, primary dealers are expected to (i) make reasonably good markets in their trading relationships with the New York Fed’s trading desk; (ii) participate meaningfully in auctions of U.S. Treasury securities; and (iii) provide the New York Fed’s trading desk with market information and analysis that may be useful in the formulation and implementation of monetary policy. The current list of primary dealers is available on the New York Fed’s website at <https://www.newyorkfed.org/markets/primarydealers>.

The New York Fed will consider increasing the institutions which may be TALF Agents, subject to adequate due diligence and compliance work. To the extent that the New York Fed designates additional TALF Agents, such information will be available on the New York Fed’s website at <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility>.

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TALF Agents will be expected to act as agents of borrowers in, among other things, making application for TALF 2020 loans. TALF Agents will also (i) assess the eligibility of prospective borrowers and collateral, (ii) receive that portion of the interest and principal distributions on the collateral that is for the account of the borrowers, and (iii) disburse such interest and principal to the borrowers. The TALF Agents will also be expected to perform certain recordkeeping functions. The function of the TALF Agents in TALF 2020 is necessary to the success of program because the New York Fed and TALF SPV lack the resources to perform these functions themselves.

Section 11(d)(1) of the Exchange Act generally prohibits a broker-dealer from directly or indirectly arranging for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which it participated as a member of a selling syndicate or group within thirty days prior to such transaction (the “Restricted Period”), unless an exemption is otherwise available. Therefore, absent the requested relief, to the extent that the activities of a TALF Agent under the TALF 2020 program would entail “arranging” the nonrecourse TALF 2020 loans, the restrictions in Section 11(d) would limit the participation of such TALF Agent and its customers in TALF 2020 financing during the Restricted Period with respect to any new issue as to which such TALF Agent acted as a member of a selling syndicate or group. The New York Fed believes that any such limitations would hamper the effectiveness of the TALF 2020.

The success of the TALF 2020 program relies on the effective participation of TALF Agents in facilitating the availability of the program to potential participants. Because the success of the TALF 2020 program is important to the United States Government's efforts to restore the availability of credit in the national economy, the relief requested is amply justified on the grounds of public policy and in the public interest. As described below, various structural features of TALF 2020 provide safeguards such that the relief may be granted without compromising investor protection. Accordingly, this request satisfies the criteria for the issuance of an exemptive order under Section 36 of the Exchange Act.

Summary of TALF 2020

On March 23, 2020, the Board of Governors of the Federal Reserve System (the “Board”), with the approval of the Secretary of the Treasury, authorized the New York Fed to establish and operate TALF 2020 under Section 13(3) of the Federal Reserve Act.² The Department of the Treasury, using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act, will make an initial

² 12 U.S.C. § 343(3).

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\$10 billion equity investment in the TALF SPV. Under TALF 2020, the New York Fed will lend, on a recourse basis, to the TALF SPV that will lend, on a non-recourse basis, to eligible borrowers secured by certain highly rated ABS. TALF 2020 is intended to support the provision of credit to consumers and businesses by enabling the issuance of ABS backed by private student loans, auto loans and leases, consumer and corporate credit card receivables, equipment loans and leases, floorplan loans, insurance premium finance loans, certain small business loans guaranteed by the Small Business Administration, and leveraged loans.³

The TALF 2020 term sheet and more detailed terms and conditions are available on the Federal Reserve's public website.⁴ As noted in the term sheet, TALF 2020 will cease making new loans on September 30, 2020, unless the Board and the Department of the Treasury elect to extend the facility.

Role of the TALF Agents

For all purposes of TALF 2020, including requests for and disbursements of loans, the pledging and delivery of collateral, and payments of interest and principal, each eligible borrower will be required to interface with the New York Fed and the TALF SPV through a TALF Agent with which it has established an account. The TALF Agents will act as agents for their respective eligible borrowers with respect to all aspects of TALF 2020 and, in particular, will bind the eligible borrowers to the terms and conditions of the TALF 2020 loan documentation pursuant to prior written authorization from each eligible borrower for whom it is acting. The TALF Agents will have no liability for the obligations of their respective borrowers, and neither the New York Fed nor the TALF SPV will have recourse to the TALF Agents, except with respect to breaches of certain fundamental representations. The TALF Agents will not borrow from the TALF SPV for onlending to borrowers with respect to the same collateral.

In connection with their agent role, the TALF Agents will be expected to (i) perform customary "know your customer" processes on their borrowers, (ii) determine whether each prospective borrower is an "eligible borrower," (iii) perform certain screening procedures to establish the eligibility of collateral proposed to be pledged by their borrowers (based upon a review of the offering materials for the relevant ABS), (iv) keep records of the loans made to, and the collateral pledged by, each of their borrowers, and (v) receive and deliver TALF-related notices on behalf their borrowers. In addition, all payments in respect of interest and principal

³ Certain legacy commercial mortgage-backed securities are also eligible ABS. The set of permissible underlying assets of eligible ABS may be expanded later to other asset classes.

⁴ TALF 2020 information is available on the New York Fed's website at: <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility>.

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on the underlying collateral that are to be paid to a borrower shall be paid by the custodian to such borrower's TALF Agent, for further distribution to that borrower.

Justification for Relief Requested

In 2009, the SEC provided a limited exemption from the prohibition under Section 11(d)(1) in connection with the Federal Reserve's establishment of the prior emergency term asset-backed securities loan facility ("TALF 2008").⁵ Given that the role of TALF Agents in TALF 2020 are expected to be consistent with those described in respect of TALF 2008 in our prior letters to you, dated February 17, 2009, and August 13, 2009,⁶ we believe that this request satisfies the criteria for the issuance of an exemptive order under Section 36 of the Exchange Act.

The relief is necessary and appropriate in the public interest. The TALF 2020 program is intended to unblock the flow of funds into certain asset classes. This is a critical objective in the Government's overall strategy to stabilize and revitalize the nation's economy. The New York Fed's objective of encouraging maximum participation by each TALF Agent would be undermined if a TALF Agent is not permitted to perform its role under TALF 2020 when it is also acting as an underwriter or selling group member with respect to a particular issue of ABS that is to serve as eligible collateral for a TALF 2020 loan.

The relief is also consistent with investor protection. First, unlike most ordinary margin credit, TALF 2020 loans are non-recourse to the borrower, absent a breach of representation or other enforcement event under the facility documentation, and therefore neither the TALF SPV nor the New York Fed may proceed against the borrower for collection of the loan balance, irrespective of the market value or performance of the underlying collateral. Second, natural persons do not qualify as participants under the TALF 2020 program.

⁵ Letter dated February 17, 2009 from James L. Eastman, Chief Counsel and Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Thomas C. Baxter, Jr. General Counsel and Executive Vice President, Federal Reserve Bank of New York; Letter dated August 21, 2009 from Paula R. Jensen, Deputy Chief Counsel, Division of Trading and Markets, U.S. Securities and Exchange Commission to Joyce M. Hansen, Deputy General Counsel and Senior Vice President, Federal Reserve Bank of New York.

⁶ Letter dated February 17, 2009 from Thomas C. Baxter, Jr., General Counsel and Executive Vice President, Federal Reserve Bank of New York to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission; Letter dated August 13, 2009 from Joyce M. Hansen, Deputy General Counsel and Senior Vice President, Federal Reserve Bank of New York to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission.

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Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned at (212) 720-8602 or Janine Tramontana at (212) 720-5438.

Michael Held
General Counsel and Executive Vice President