SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88884 / May 15, 2020)

Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) for Certain Asset Backed Securities and Other Collateral

The Securities and Exchange Commission ("Commission" or "SEC") is issuing an order granting an exemption from compliance with Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") pertaining to certain lending transactions in asset backed securities.

I. Introduction

By letter dated May 12, 2020 (the "Letter"),[1] the Federal Reserve Bank of New York ("New York Fed"), has requested that the Commission grant exemptive relief from Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") to permit all brokers and dealers registered with the Commission and designated by the New York Fed as "TALF Agents" ("TALF Agents") 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)(l).

II. Discussion

[1] Letter from Michael Held, General Counsel and Executive Vice President, Federal Reserve Bank of New York to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated May 12, 2020. Each defined term in this order has the same meaning as defined in the Letter, unless otherwise noted.

Section 11(d)(1) of the Exchange Act generally prohibits a person that is both a broker and a dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on any security (other than an exempted security) that was part of a distribution of a new issue of securities in which the broker-dealer participated as a member of a selling syndicate or group within thirty days prior to such transaction.

The 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.[2] TALF Agents will act as agents of borrowers in, among other things, making applications for TALF 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. TALF Agents will also perform certain recordkeeping functions. In addition, all payments in respect of interest and principal 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. The function of the TALF Agents is necessary to the success of the TALF 2020 because the New York Fed and the TALF SPV lack the resources to perform these functions themselves.

The Commission understands, based on the New York Fed statements, that the success of the TALF 2020 program depends on the effective participation of TALF Agents in facilitating the

[2] 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

availability of the program to potential participants, and furthermore that 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 is consistent with investor protection because the 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. Furthermore, natural persons do not qualify as participants under the TALF 2020 program. The Commission agrees that granting the requested relief is consistent with its tripartite mission.

III. Conclusion

In light of the above, and in accordance with Section 36 of the Exchange Act, the Commission finds that exempting brokers and dealers that are designated by the New York Fed as TALF Agents and that participate in TALF 2020 from the requirements of Section 11(d)(1) of the Exchange Act with respect to ABS that are or that may be designated as “eligible collateral” is necessary and appropriate in the public interest, and consistent with the mission of the Commission, including the protection of investors.[3]

IT IS HEREBY ORDERED, pursuant to its authority under Section 36 of the Exchange Act, based on the representations and facts presented in the Letter, that any broker-dealer that is

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[3] Exchange Act Section 36 [15 U.S.C. §78mm]. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security, or transaction (or any class or classes of persons, securities, or transactions) from any provision of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

designated as a TALF Agent and that participates in TALF 2020 by facilitating extensions of non-recourse credit, on behalf of the TALF SPV, to a purchaser of new issues of securities is exempt from the prohibition on arranging certain credit contained in Section 11(d)(1) with respect to ABS securities that are or that may be designated as designated as "eligible collateral."

This exemption from Section 11(d)(1) of the Exchange Act applies solely to such TALF Agent's facilitation of extensions and maintenance of credit by the New York Fed pursuant to the TALF 2020 with respect to ABS that are or that may be designated as "eligible collateral," and not to any other extension or maintenance of credit, or any other arranging for the extension or maintenance of credit, on new issues of securities in the distribution of which such TALF Agent participated as a member of a selling syndicate or group within the meaning of Section 11(d)(1) of the Exchange Act.

This order should not be considered a view with respect to any other question that participation in TALF 2020 program may raise, including, but not limited to the applicability of other federal or state laws to such participation.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.[4]

J. Matthew DeLesDernier
Assistant Secretary

[4] 17 CFR 200.30-3(a)(62).