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November 9, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: *Extensions of Credit by Federal Reserve Banks, Docket Number R-1371*

Dear Ms. Johnson:

DBRS appreciates the opportunity to comment on the above-referenced proposal to establish a process by which the Federal Reserve Bank of New York may determine the eligibility of credit rating agencies and the ratings they issue for purposes of the Term Asset-backed Securities Loan Facility (TALF). DBRS is a credit rating agency registered as a nationally recognized statistical rating organization (NRSRO).

Background

The Board of Governors of the Federal Reserve System (Board) established the TALF last year to address the unusual and exigent circumstances brought about by the financial crisis. As originally conceived, this funding facility, which is administered by the Federal Reserve Bank of New York, supported the issuance of new asset-backed securities (ABS) collateralized by auto loans, student loans, credit card receivables, equipment loans, floorplan loans, insurance premium finance loans and servicing advance receivables. In order to qualify for this program, an ABS must be denominated in U.S. dollars, must be rated in the highest investment-grade rating category by at least two "major NRSROs" and must not be rated below the highest investment-grade rating category by any "major NRSRO." The Board and the Federal Reserve Bank of New York defined the term "major NRSRO" (a term that does not have any general legal or regulatory significance) to mean Standard & Poor's, Moody's Investors Service, and Fitch Ratings. In so doing, the. Federal Reserve defaulted to the three largest NRSROs without examining the capabilities of any other registered credit rating agency.
The TALF was expanded earlier this year to include certain high-quality legacy and newly issued commercial mortgage-backed securities (CMBS) as eligible collateral. Although the general terms for this asset class were consistent with those for the other TALF asset classes, a different approach was taken regarding the NRSROs whose credit ratings could be used to determine eligibility. Instead of simply defaulting to the largest NRSROs, the Board and the Federal Reserve Bank of New York examined the qualifications of a number of registered credit rating agencies and selected five

NRSROs, including DBRS, whose ratings would be recognized for purposes of determining TALF-eligible CMBS.

The Board now proposes to establish an objective process for the Federal Reserve Bank of New York to use in deciding which credit ratings to accept in connection with TALF ABS other than CMBS.

The Proposed Approach to Recognizing Rating Agencies

DBRS commends the Federal Reserve for reviewing the way it determines which credit ratings can be used in connection with its various credit facilities. The practice of defaulting to the three largest rating agencies is at odds with the explicit goal of the Credit Rating Agency Reform Act of 2006 (Rating Agency Act), which was to foster competition in the credit ratings market. Moreover, the long-term efficiency of the capital markets requires that NRSROs be allowed to compete on the quality of their work, not their size or their legacy.

DBRS also supports the objective, experience-based approach the proposal adopts. In particular, DBRS agrees that registration as an NRSRO is a necessary, but not sufficient, test for TALF participation.

In implementing the Rating Agency Act, the SEC has established a robust regulatory regime designed to ensure the integrity and transparency of credit ratings issued by registered rating agencies. As the Proposing Release notes, this regime includes extensive controls on rating agency conflicts of interest, and prohibitions on both the misuse of material, nonpublic information and unfair business practices. The NRSRO regulatory regime also requires registered rating agencies to use systematic rating processes and transparent rating methodologies, and to publish sufficient information and performance data to permit comparability with other parties performing similar services. Furthermore, registered rating agencies are subject to SEC examination to ensure their compliance with the NRSRO obligations.
Accepting for TALF purposes credit ratings issued by unregulated entities, whose conflicts of interest may be unmanaged, whose methodologies may be opaque, and whose track records may be undisclosed, could expose U.S. taxpayers to unprotected credit risk. Consequently, DBRS agrees that registration as an NRSRO for issuers of ABS should be a threshold requirement for any rating agency whose ratings are to be recognized under the TALF.

However, DBRS does not believe that credit risk can be controlled solely on the basis of NRSRO registration. As the Proposing Release indicates, the Rating Agency Act does not permit the SEC to regulate the substance of credit ratings. Furthermore, although the NRSRO registration process incorporates a market acceptance component, the asset classes for registration under the Rating Agency Act are broad, and the market acceptance standards within each class are minimal.

The Board proposes to address this issue by establishing more robust credit rating experience requirements than the ones embedded in the NRSRO registration process. Under this proposal, an NRSRO would have to have rated at least ten U.S. dollar-denominated transactions since September 2006 within the TALF sector for which the NRSRO wishes its ratings to be accepted. The NRSRO also would have to have a current and publicly available rating methodology specifically addressing that sector. DBRS believes that these requirements are reasonably designed to contain credit risk in the TALF and endorses this aspect of the Federal Reserve's proposal.

DBRS further supports conditioning acceptance of an NRSRO upon the NRSRO's agreeing to confer with the Federal Reserve regarding relevant TALF credit risk issues and to provide requested information regarding the NRSRO's continuing eligibility under the program. Finally, DBRS endorses the efficient NRSRO recognition process set forth in the proposal. Given the anticompetitive effects of the status quo, DBRS believes it is critical to bring other qualified NRSROs into the program without undue delay.

CONCLUSION

DBRS believes that the Board has devised an objective, prudent and consistent process for determining eligibility of NRSROs and their ratings for purposes of TALF ABS. We urge the Board to continue reviewing its approach to using credit ratings for purposes of its regular discount window loans. As the current proposal demonstrates, it is possible to maintain the integrity of Federal Reserve credit facilities in a manner that also promotes competition among credit rating agencies.

We would be happy to supply the Board or the staff with additional information regarding any of the matters discussed herein. Please direct any questions about these comments to the undersigned or to our outside counsel, Mari-Anne Pisarri of Pickard and Djinis LLP. She can be reached at 202-223-4418.

Very truly yours,

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