



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

May 21, 2009

Richard K. Kim, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Dear Mr. Kim:

This is in response to your request, on behalf of Ally Bank (“Bank”), formerly known as GMAC Bank, Midvale, Utah, for an exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W¹ to permit the bank to lend to consumers to enable them to purchase automobiles from unaffiliated dealers in the United States that obtain floorplan financing from Bank or affiliates of Bank (“Retail Loans”) and to provide floorplan financing to unaffiliated dealers (“Dealer Loans”) to purchase automobiles from General Motors Corporation (“GM”).

The Department of the Treasury (“Treasury”) is in the process of adopting plans to restructure and revitalize GM and Chrysler Holdings LLC (“Chrysler”) that include providing substantial funding to both companies. Treasury believes that an important contributor to the success of the restructuring would be ensuring a source of funding for the sale of automobiles. Consequently, Treasury also is proposing to provide substantial capital support to GMAC LLC (“GMAC”), Detroit, Michigan, Bank’s parent, to allow it to continue its financing of GM automobile purchases and to expand its activities to include financing Chrysler automobiles. Because Chrysler will not be an affiliate of Bank for purposes of section 23A, no exemption is needed for Bank to provide retail or wholesale funding related to the purchase of Chrysler automobiles.

Section 23A and Regulation W limit the amount of “covered transactions” between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus and limit the amount of covered transactions between a bank and all its affiliates to 20 percent of the bank’s capital stock and surplus.² “Covered transactions” include the purchase of assets by a bank from an affiliate and a bank’s extension of credit to an affiliate.³ The statute and regulation also require a bank to secure its extensions of credit to, and certain other covered transactions with, affiliates with prescribed amounts of collateral.⁴

¹ 12 U.S.C. § 371c; 12 CFR part 223.

² 12 U.S.C. § 371c(a)(1) and 12 CFR 223.11 and 223.12.

³ 12 U.S.C. § 371c(b)(7) and 12 CFR 223.3(h).

⁴ 12 U.S.C. § 371c(c) and 12 CFR 223.14.

In addition, section 23A and Regulation W contain an attribution rule, which provides that a transaction between a bank and a third party will be treated as a transaction between the bank and an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate of the bank.⁵ The attribution rule is intended, among other things, to prevent a bank from evading the restrictions in the statute and rule by using intermediaries and to limit the exposure that a bank has to customers of its affiliates.⁶

Section 23A and Regulation W also specifically authorize the Board to exempt, in its discretion, transactions or relationships from the requirements of the statute and rule if the Board finds such exemptions to be in the public interest and consistent with the purposes of section 23A.⁷ The Board previously has indicated that the twin purposes of section 23A are (i) to protect against a depository institution suffering losses in transactions with affiliates and (ii) to limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net.⁸

Until GM completes its divestiture of GMAC, GM and Bank are affiliates for purposes of section 23A.⁹ Moreover, GMAC and Bank are also affiliates. The automobile dealers, though franchisees of GM, are not affiliates of Bank for purposes of section 23A because the dealers are independently owned and operated, and the ultimate purchasers of the automobiles are not affiliates of Bank. Loans by Bank to both retail consumers and unaffiliated dealers under this exemption request are covered transactions under section 23A and Regulation W because of the attribution rule. The attribution rule applies to Retail Loans because most of the loan proceeds are transferred by the consumer to the dealer and from the dealer to GMAC or another affiliate in repayment of the dealer's floorplan loan. The attribution rule also applies to Dealer Loans because the proceeds of Bank's loans to dealers would be transferred from the dealer to GM in order to purchase GM-produced automobiles to hold in inventory.¹⁰ Thus, the proceeds of Bank's loans are transferred through third parties to the bank's affiliate.

As noted, section 23A and Regulation W limit the amount of covered transactions between a bank and any single affiliate to 10 percent of the bank's capital stock and surplus and

⁵ 12 U.S.C. § 371c(a)(2); 12 CFR 223.16.

⁶ See 67 Federal Register 76576 (Dec. 12, 2002).

⁷ 12 U.S.C. § 371c(f)(2); 12 CFR 223.43(a).

⁸ 67 Federal Register 76560 (Dec. 12, 2002).

⁹ 12 U.S.C. § 371c(b)(1)(A); 12 CFR 223.2(a)(1) and (2).

¹⁰ The attribution rule also would apply to a loan made by Bank to a retail customer to purchase a GM automobile from an unaffiliated dealer that receives floorplan financing from Bank. Although the loan proceeds would be transferred to Bank, the proceeds ultimately are used to benefit GM because the loan allows the dealer to purchase another automobile from GM. Because GM benefits from the proceeds of Bank's loan to a retail customer, Bank must treat a loan to a retail customer as a covered transaction where the dealer received floorplan financing from Bank.

limit the amount of covered transactions between a bank and all its affiliates to 20 percent of the bank's capital stock and surplus. With the capital support from Treasury, Bank's capital stock and surplus would be approximately [], which would limit the bank's covered transactions with a single affiliate to [] and with all affiliates to []. Bank proposes to engage in up to [] in covered transactions that would not meet the collateral requirements of section 23A and Regulation W. Accordingly, Bank has requested exemptions from the quantitative limits and collateral requirements of section 23A and Regulation W for these proposed transactions.

Although Bank may have an incentive to make loans to retail customers and dealers to support GM's sales and improve GMAC's liquidity, there are some significant mitigating factors in this proposal. The proposed automobile loans would expose Bank to the diversified credit risk of thousands of unaffiliated borrowers rather than the credit risk of a single affiliate. Moreover, the proposed loans would be secured by automobiles, which would partially offset the credit risk associated with the loans. In addition, the exemption would be subject to a number of conditions discussed below that are designed to limit the risk to the bank. These conditions should help guard against Bank's making high-risk loans solely to support its affiliates.

The exemption for Retail Loans would be subject to the following conditions that would limit the risk of Retail Loans made under the exemption:

- Bank may make loans only to customers with a credit bureau risk (FICO) score of [] or higher.¹¹
- Bank may not rely on this exemption to make loans to customers of GM dealers that are affiliates of the bank.
- Bank may rely on the exemption only for loans that have a maturity of [] or less, are for no more than [] to any one customer, are for purchases (not leases) of automobiles, and are new originations.
- Exempt loans may be for no more than [] of the purchase price of the vehicle.¹²

In addition, the following conditions would limit the risk of loans that Bank originates under the exemption for Dealer Loans:

- Dealers must be independent of GM.
- Dealers must be current with existing floorplan borrowings (without modification) from any lender.

¹¹ The Board's SR Letter implementing the Expanded Interagency Guidance for Subprime Lending Programs provides that loans to customers with a credit bureau risk (FICO) score of 660 or below are generally associated with a relatively high default probability. See SR Letter 01-04, Guidance on Supervision of Subprime Lending, January 31, 2001.

¹² An automobile loan customarily includes the cost of taxes, title and license fees, and warranties.

- Loans must conform to Bank's underwriting standards, using traditional inventory turn and operating profit metrics to measure financial capacity of each dealer.
- Bank may finance only the normal factory invoice amount.
- Loans must be repaid when inventory is sold.
- Exempt loans are only available for dealers to purchase new inventory.

Further, in the case of Retail Loans and Dealer Loans, GMAC must either:

- Make a cash payment to Bank equal to the book value at the end of each calendar quarter, plus write-downs during that quarter by Bank, of any exempt loan that becomes a low-quality asset during that quarter; or
- Purchase from Bank (or its operating subsidiaries), on a quarterly basis, any exempt loan that becomes a low-quality asset during that quarter at a price equal to the book value at the end of that quarter plus previous write-downs by Bank of any such asset. GMAC will make the cash payment or will purchase the assets within 30 days after the end of each calendar quarter.

When granting exemptions in the past, the Board has required a parent company to collateralize the guarantee.¹³ A collateralized guarantee generally has been required in situations when an affiliate proposes to transfer to the bank assets that had been originated or purchased by the affiliate. As a result, the quality of the assets was difficult to ascertain in advance of the transfer. In this case, however, all loans will be originated at Bank through an underwriting process that is subject to review by the bank's primary federal banking regulator. Although the Board required that GMAC provide collateral to support its guarantee in connection with Bank's December 2008 Exemption, GMAC's financial position will be strengthened by an additional equity investment by Treasury. Treasury's support helps ensure that GMAC will be in a position to honor its obligations under the guarantee.

In addition, the exemptions are subject to the following conditions that provide Bank with additional protections:

- Exemption amount is limited to [].¹⁴
- GMAC must maintain a total risk-based capital ratio of [] and must maintain a tier 1 leverage ratio of [] at Bank.¹⁵ For the purpose of calculating Bank's capital commitment, if GMAC makes a cash payment to Bank, Bank will hold an amount of risk-based capital equal to the book value of any exempted credit that becomes a low-quality asset so long as Bank (or any operating subsidiary) retains ownership or control of such credit. For example, under this dollar-for-dollar capital

¹³ See e.g. Board letters to Michael Civitella (Goldman Sachs Bank USA), dated April 22, 2009; to Paul E. Glotzer, Esq. (Morgan Stanley Bank, N.A.), dated April 22, 2009; and to Richard K. Kim, Esq. (GMAC Bank), dated December 24, 2008 ("December 2008 Exemption").

¹⁴ This exemption amount is inclusive of the exemption the Board granted to the bank in the December 2008 Exemption.

¹⁵ 12 CFR 325.103; 12 CFR 225.2(r).

requirement, the risk-based capital charge for each exempted asset that becomes a low-quality asset would be 100 percent (equivalent to a 1250 percent risk weight), rather than the 8 percent requirement (equivalent to a 100 percent risk weight) that would apply to a similar defaulted loan asset that is not a part of the exempted asset pool.¹⁶

- Before any exempt loans are originated, a majority of Bank's directors will review and approve the exemption proposal.

Finally, Bank intends to provide a below-market interest rate to GM retail customers. Because Bank would rely on GM to compensate the bank for the below-market interest rate that the bank would offer to retail customers, the incentive arrangements between GM and Bank must meet, in the opinion of the Federal Deposit Insurance Corporation ("FDIC") and Federal Reserve staffs, the market-terms requirement in section 23B.¹⁷ [

] Because GM compensates Bank for the difference between the market-based support rate and the subvented rate, Retail Loans appear to be consistent with section 23B.

Granting these exemptions would benefit the public because they would allow Bank to extend credit to a greater number of retail customers and provide dealers with greater access to financing, thereby avoiding further disruption in the credit market for automobile purchases. Accordingly, the exemptions appear to be in the public interest and consistent with the purposes of section 23A. The Board, after consultation with staff of the FDIC, hereby grants the requested exemptions.

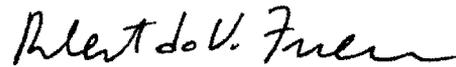
These determinations are specifically conditioned on compliance by Bank and GMAC with all the conditions discussed in this letter and all the commitments and representations made to the Board in connection with the requested exemptions. These conditions, commitments, and representations are deemed to be conditions imposed in writing in connection with granting the exemptions and, as such, may be enforced in proceedings under applicable law. These determinations are based on the specific facts and circumstances surrounding the proposed transactions and may be revoked in the event of any material change in those facts or circumstances or any failure by Bank or GMAC to observe any of their commitments or representations. Granting these exemptions does not represent a determination concerning the

¹⁶ Once the capital pool has been allocated to specific assets as described above, the capital cannot be applied to other low-quality assets if the initial low-quality asset returns to performing status. Bank can apply the allocated capital pool to new assets if the initial assets are fully paid or sold.

¹⁷ Section 23B of the Federal Reserve Act generally requires that transactions between a bank and its affiliates be on terms that are at least as favorable to the bank as the terms of comparable transactions between the bank and third parties. 12 U.S.C. § 371c-1(a)(1).

permissibility of any other transactions engaged in by Bank or GMAC that are subject to section 23A and Regulation W.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert deV. Frierson".

Robert deV. Frierson
Deputy Secretary of the Board

cc: Mr. Patrick Wilder, Assistant Vice President
Federal Reserve Bank of Chicago
Federal Deposit Insurance Corporation