



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551

February 13, 2020

Joseph Vitale, Esq.
Schulte Roth & Zable LLP
919 Third Avenue
New York, New York 10022

Dear Mr. Vitale:

This letter responds to your request dated November 21, 2019, on behalf of Stephen A. Feinberg and Cerberus Capital Management, L.P. (“CCM”) (collectively, “Cerberus”), and affiliated entities of Cerberus that had directly or indirectly invested in equity interests of Ally Financial, Inc. (“Ally”) (formerly, GMAC LLC), Detroit, Michigan (“affiliated entities”), for relief from passivity commitments made to the Board on December 23, 2008, which were subsequently amended or modified (the “Passivity Commitments”). The Passivity Commitments were made in connection with the Board’s approval of an application by Ally to become a bank holding company on the conversion of Ally Bank (formerly, GMAC Bank) from an industrial loan company to a commercial bank on December 24, 2008,¹ and with the Board’s non-control determination letter issued on March 24, 2009.² The Passivity Commitments were intended to ensure that

¹ In addition, due to Cerberus’s extensive business relationships with, and ownership interests in, Ally, Cerberus also provided supplemental transitional commitments to the Board on December 23, 2008, which specified a date by which Cerberus had to comply with certain Passivity Commitments (“Transitional Commitments”). Thus, the Transitional Commitments were intended to provide limited relief from the Passivity Commitments to allow Cerberus adequate time to divest a significant portion of its Ally shares and to terminate all employee and certain director interlocks. Cerberus divested the required amount of stock and terminated the required business relationships in 2009. Because the time period referenced in the Transitional Commitments expired in 2009, these commitments have long since been considered moot.

² On March 24, 2009, the Board issued a letter determining that Mr. Feinberg and the entities he controlled that held equity interests in Ally (including CCM) would not be deemed to control Ally under the Bank Holding Company Act of 1956 (“BHC Act”), in reliance on the completion of a number of conditions described in the letter. Consistent

Cerberus and the affiliated entities would not exercise a controlling influence over Ally for purposes of the BHC Act. The requested relief would completely relieve Cerberus and the affiliated entities from the Passivity Commitments.

Cerberus represents that all of the shares of Ally held by Cerberus and the affiliated entities had been fully divested by November 28, 2016; no trusts or entities controlled by Mr. Feinberg currently own or control any shares of Ally; and Cerberus is not aware of any CCM-controlled portfolio company³ that currently owns or controls any shares of Ally.⁴ Other than two CCM management officials, who own a de minimis

with this non-control determination, two of the Passivity Commitments were amended to reflect that (i) the final percentage of ownership and control of Ally stock held by Cerberus and the affiliated entities was less than 25 percent (*i.e.*, Cerberus and the affiliated entities committed not to acquire any additional voting securities in addition to the 22.02 percent of Ally's voting securities then owned or controlled by Cerberus), and (ii) Cerberus and its affiliated entities would not own or control any nonvoting equity interest in Ally. A copy of this letter and the amended Passivity Commitments is available on the Board's website:

<https://www.federalreserve.gov/supervisionreg/legalinterpretations/20090324.pdf>. On July 13, 2009, these Passivity Commitments were further amended to (i) remove a compliance date specified in one of the commitments, which had been rendered moot by its completion; and (ii) reference the non-control determination letter issued by the Board to Cerberus on March 24, 2009. The Director of the Division of Supervision and Regulation, acting under delegated authority, approved limited modifications to the Passivity Commitments in 2012, 2013, and 2015, to permit Cerberus to engage in certain limited transactions with Ally. On October 31, 2013, one of the Passivity Commitments was further amended to reflect that Cerberus and the affiliated entities committed not to own, control, or hold with power to vote any equity interest in Ally or any of its subsidiaries, other than the common shares of Ally that were then held by Cerberus and the affiliated entities, which at that time represented 8.7 percent or less of the common shares of Ally.

³ A "CCM-controlled portfolio company" refers to a portfolio company that CCM is considered to "control" under the BHC Act, although CCM would not necessarily be the majority shareholder.

⁴ Cerberus advises that Mr. Kim Fennebresque, an independent director at a grocery store chain that is a Cerberus-controlled portfolio company and at two companies that were formerly Cerberus-controlled portfolio companies, owns less than 0.01 percent of Ally's total common stock. Mr. Fennebresque also serves as an independent director on Ally's board. To the extent that Mr. Fennebresque serves as an independent director at the grocery store chain and as an independent director at Ally, Cerberus represents that Mr. Fennebresque does not represent Cerberus in his position on Ally's board and that Mr. Fennebresque was initially appointed to Ally's board by the U.S. Treasury in 2009.

amount of Ally stock (collectively, less than 0.001 percent of Ally's total stock), and the ownership interest of Mr. Fennebresque, Cerberus represents that it has no knowledge of any other management official's or employee's ownership of Ally stock, and further represents that it has no rights or agreements with respect to the ownership or distribution of the Ally shares held by the two management officials or Mr. Fennebresque. Cerberus further represents that it does not have either representation on the board of directors of Ally or any of its affiliates or the right to appoint a director to or have representation on the board of directors of Ally or any of its affiliates; any director or employee interlocks with Ally or any of its affiliates; any formal or informal agreements with Ally or any of its affiliates relating to the management or policies of Ally or Ally Bank; any existing or anticipated business relationships with Ally or its affiliates through which Cerberus might exercise control over Ally or its affiliates; or any relationships with other shareholders of Ally through which Cerberus might exert influence over Ally or any of its affiliates. Cerberus has also represented that Cerberus and the affiliated entities will not exercise or attempt to exercise a controlling influence over Ally if granted relief from the Passivity Commitments.

Based on all the facts of record, the Director of the Division of Supervision and Regulation, acting pursuant to authority delegated by the Board under section 265.7(a)(2) of the Board's Rules Regarding Delegation of Authority⁵ and after consulting with the General Counsel, has approved Cerberus's and the affiliated entities' request for relief from the Passivity Commitments. This action is based on the representations and commitments provided in your communications and correspondence related to your request, including the representations discussed above. Any change in the facts presented could result in a different conclusion and should be reported to Board staff immediately. This determination should not be construed as granting relief from any other conditions or commitments to which Cerberus and the affiliated entities may be subject.

Very truly yours,

Ann E. Misback (signed)
Ann E. Misback
Secretary of the Board

cc: Federal Reserve Bank of Chicago

⁵ 12 CFR 265.7(a)(2).