



INSTITUTE OF INTERNATIONAL BANKERS

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Richard P. Dzina
Senior Vice President and
Acting Markets Group Head
Federal Reserve Bank of New York
33 Liberty Street
New York, N.Y. 10045

Mark E. van der Weide
Assistant General Counsel
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Dear Messrs. Dzina and van der Weide:

I am writing to follow up on our recent discussions regarding the impact of excluding the U.S. subsidiaries and offices of internationally headquartered banks that are foreign government-controlled from borrowing under the Federal Reserve's Term Asset-Backed Securities Loan Facility ("TALF"). As discussed, we believe that including those U.S. operations would promote the purposes of the program and be consistent with both statutory requirements and the longstanding U.S. commitment to the principle of national treatment and related U.S. treaty obligations. The rationale for permitting foreign government-controlled banks to participate in the TALF is especially strong with respect to those banks whose home country government has acquired a controlling interest (as determined for purposes of the TALF) in connection with recent G-20 coordinated financial stabilization and capital support programs.

The TALF is intended to promote lending to consumers and small businesses by facilitating renewed issuance and trading of consumer and small business asset-backed securities ("ABS"). This goal is furthered best by having as many banks as possible participating in the program and providing expanded credit to the ABS market. The U.S. operations of internationally headquartered banks have been active participants in the ABS market, acting both as underwriters of and investors in ABS. We recognize and appreciate that these operations generally are eligible to borrow under the TALF if their parent bank is not foreign government-controlled, and we anticipate they will continue to provide an important source of liquidity for the ABS market and make a significant contribution to the reinvigoration of consumer and small business lending in the country.

However, we strongly believe that excluding a segment of the U.S. operations of internationally headquartered banks from borrowing under the TALF simply because the parent bank is controlled by a foreign government will only diminish the effectiveness of the facility without providing any corresponding benefit to American consumers, small



businesses or the economy in general. With respect to those institutions involved in underwriting ABS that qualifies as TALF-eligible collateral, the exclusion places them at a significant competitive disadvantage vis-à-vis their U.S. domestic counterparts by cutting them off from a key source of financing for their underwriting and trading activities. As to those interested in investing in such securities, the exclusion operates as an outright prohibition from a key source of financing for those activities, thereby artificially limiting the universe of potential buyers and sellers. We respectfully suggest that any benefits perceived to be derived from the exclusion, as it applies to the U.S. operations of internationally headquartered banks, are significantly outweighed by these very real negative consequences.

Including the U.S. operations of foreign government-controlled internationally headquartered banks in the TALF will not result in a subsidy to foreign governments. Instead, as intended, the value of the program will accrue to U.S. consumers and small businesses and the market generally. To the extent there is a benefit to anyone else, it accrues to the U.S. operations, which are U.S. companies and offices whose activities are subject to U.S. regulation and whose employees are predominantly U.S. citizens. It is instructive that the U.S. operations of internationally headquartered banks have been allowed to participate in the Federal Reserve's Commercial Paper Funding Facility without regard to whether they are foreign government-controlled, and considerations relating to foreign government ownership likewise are not relevant to their eligibility to participate in the FDIC's Temporary Liquidity Guarantee Program.

An element of the TALF includes the limited use of funds from the Troubled Assets Relief Program ("TARP"). However, an eligible borrower's obligation under the TALF is non-recourse, and TARP funds are intended only to provide backstop support for the Federal Reserve's potential credit exposure with respect to the ABS collateralizing its loans. Accordingly, the TALF does not involve the provision of financial assistance under the TARP to eligible borrowers. As such, there is no legal prohibition under the TARP legislation against an eligible borrower being controlled by a foreign government. Moreover, nothing in Section 13(3) of the Federal Reserve Act requires the exclusion of foreign government-controlled banks from the program.

Parity of treatment for the U.S. operations of internationally headquartered banks vis-à-vis U.S. domestic institutions has been a cornerstone of U.S. policy for many decades and is reflected as well in U.S. treaty obligations. In this regard, we would note that imposing a "foreign government-controlled" exclusion under the TALF risks the possibility that other countries adopting similar programs would reciprocate with respect to any U.S. institution that might be found to be controlled by the U.S. Government (for example, as a result of having received "exceptional assistance" under the TARP). Adherence to the principle of national treatment has served the country well over the years, and we firmly believe that this principle should apply equally with respect to the eligibility of internationally headquartered banks' U.S. operations under the TALF.



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Based on the foregoing, we respectfully urge the Federal Reserve to reconsider the criteria for “eligible borrowers” under the TALF to permit participation by the U.S. operations of internationally headquartered banks that are controlled by their home country governments. We believe it would be especially appropriate to adjust the eligibility criteria to borrow under the TALF to accommodate foreign banking organizations that have only recently come under the control of their home country government (as determined for purposes of the TALF) as a result of the financial assistance and capital support provided to them in connection with recent G-20 coordinated efforts to stabilize the global financial system. We also believe it would be appropriate to adjust the criteria to enable participation by institutions where governmental control is exercised not at the national level but at the equivalent of state government level, such as the Landesbanks, which have operated in the United States for several decades.

We would appreciate the opportunity, either by way of a conference call or a meeting, as you prefer, to speak further about this important issue with you and your colleagues together with representatives of interested Institute member banks. The Institute will contact your office regarding proposed arrangements.

Please contact the undersigned or the Institute’s General Counsel Richard Coffman at 212-421-1611 if we can provide any further information or assistance.

Very truly yours,

A handwritten signature in black ink that reads "Lawrence R. Uhlick". The signature is written in a cursive, flowing style.

Lawrence R. Uhlick
Chief Executive Officer