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Appendix 2C: Form of Borrower Conflicts of Interest Certification

Federal Reserve System: Federal Reserve Bank of New York

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APPENDIX 2C: FORM OF BORROWER CONFLICTS OF INTEREST CERTIFICATION

Conflict of Interest Certification

Section 4019 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) prohibits entities in which certain government officials and some of their immediate family members have a “controlling interest” from participating in certain government programs.

Section 4019(c) of the CARES Act requires the principal executive officer and principal financial officer (or individuals performing similar functions) of any eligible borrower (“Borrower”) from the Term Asset-Backed Securities Loan Facility (“TALF”) to certify to the Secretary of the Treasury (“Secretary”) and the Board of Governors of the Federal Reserve System (“Board”) that the Borrower is not a Covered Entity.

Identifying a Covered Entity

Covered Entity: “Covered Entity” means an entity in which a Covered Individual directly or indirectly holds a Controlling Interest.

Covered Individual: “Covered Individual” means the President, the Vice President, the head of an Executive department as defined in 5 U.S.C. § 101, or a member of Congress (each a “Government Official” and collectively “Government Officials”), and the spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of the Government Official (each a “Family Member” and any group of which are “Family Members”). The term “child” includes a step-child, but the term “spouse” does not include an ex-spouse. To determine a Covered Individual’s equity interest in an entity, the Government Official’s and Family Members’ equity interests shall be aggregated.

Controlling Interest: Holds a “Controlling Interest” means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity. An “equity interest” means (a) shares, (b) capital or profit interest in a limited liability company or partnership, or (c) a warrant or right (other than a right to convert) to purchase, sell, or subscribe to any such equity interest.

The determination of whether a Covered Individual directly or indirectly holds a Controlling Interest in an entity must take into account a Covered Individual’s direct interest in the entity as well as a Covered Individual’s interest in any entity that directly or indirectly has an interest in such entity (e.g., the entity’s parents).

Direct Interests: If a Covered Individual directly owns, controls, or holds 20 percent or more, by vote or value, of the outstanding amount of any class of equity interest in any with the Borrower, that entity is a Covered Entity.

Indirect Interests: For the purpose of determining the amount of an equity interest indirectly owned or held by a Covered Individual in an entity:

- A Covered Individual’s indirect equity interest by value (i.e., economic interest that may or may not include voting rights) shall be calculated on a proportional basis, taking into account any partial ownership of the relevant entity’s parents.
- For example, if a Government Official owns 25 percent of the economic interest in Company A, and Company A owns 40 percent of the outstanding amount of a class of voting securities of Company B, the Government Official is deemed to own 10 percent of the class of voting securities of Company B.

For the purpose of determining the amount of an equity interest indirectly controlled by a Covered Individual in an entity:

- A Covered Individual shall be deemed to indirectly control an equity interest in an entity if he or she controls, directly or indirectly, the entity that owns or holds the equity interest.
- An individual or entity shall be deemed to control another entity only when the individual or entity owns or holds a majority of the voting interest in such entity, or is, or holds a majority of the voting interest in, the general partner of such entity.
- For example, if a Government Official owns a 51 percent voting interest in Company A, which owns a 51 percent voting interest in Company B, which owns 20 percent of the equity interests of Company C, the Government Official shall be deemed to control 20 percent of the equity interests of Company C.

Shares: A share is considered an ownership interest without regard to whether the share is transferrable or classified as stock or anything similar and without regard to whether the share is a voting security. For example, a nonvoting preferred share would be considered a share.

Warrants or rights: If the Covered Individual has warrants or other rights (other than a right to convert), calculate the Covered Individual's interest in the underlying equity interest on a fully diluted basis assuming that both the individual and other holders of such warrants or rights have exercised such interests. Warrants, options, and similar rights must be counted even if they are unexercised or "out of the money." For example, when calculating an individual's percentage in an equity interest, use the following formula:

$$\frac{(\text{Individual's shares in a class}) + (\text{Individual's options and warrants in that class})}{(\text{Total outstanding shares in that class, assuming all warrants or rights are exercised})}$$

Basis for Certification: Reasonable Diligence

In light of limited public information on ownership interests of Government Officials, and that the identities of Government Officials' Family Members are not disclosed or reported in any routine or comprehensive manner, it is necessary to prescribe the level of diligence required to make a conflict of interest certification in good faith. To determine whether any Covered Individual holds a Controlling Interest in an entity, it is necessary and sufficient for the entity to undertake the following reasonable diligence:

1. Entities must take into account the ownership, control, and holding of any equity interest of any size if the entity has actual knowledge that a Covered Individual, directly or indirectly, owns, controls, or holds the interest.
2. Entities must determine the beneficial owner of any 5 percent or greater equity interest of the entity and determine whether such beneficial owner is a Covered Individual by (i) checking the name of each such beneficial owner against a list of all Government Officials and, (ii) if the entity has not otherwise been able to confirm whether such beneficial owner is a Family Member, by asking each such beneficial owner whether the owner is a Family Member. If the aggregate amount of equity interests owned by the identified beneficial owners, together with the aggregate percentage ownership determined from actual knowledge in (1) above, is less than 20 percent, an entity need not determine if the identified beneficial owners are Family Members.

To determine the identity of beneficial owners of publicly traded securities, issuers may rely on information disclosed by such persons in reporting under Section 13(d) and 13(g) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(d), 78m(g)).

Signatures

The certification must be signed by the principal executive officer and the principal financial officer of the entity, or individuals performing similar functions (“Authorized Officers”). By signing this certification, the Authorized Officers acknowledge that, in the case of any knowing and willful misrepresentation or omission of a material fact, the Secretary, Board, or the Federal Reserve Bank of New York may refer the matter to the relevant law enforcement authorities for investigation and possible action in accordance with applicable criminal and civil law. See, e.g., 18 U.S.C. § 1001; 31 U.S.C. § 3729.

Good Faith Certification

Pursuant to section 4019(c) of the CARES Act, to the best of my knowledge and based on reasonable diligence, I certify to the Secretary of the Treasury and the Board of Governors of the Federal Reserve System that [Entity Name] is not a covered entity, as that term is defined in section 4019(a)(2) of the CARES Act.
I further certify that, prior to September 30, 2020, or such later date to which the TALF is extended by the Board and the Secretary, [Entity Name] will immediately notify the Secretary and the Board if [Entity Name] becomes a covered entity, as that term is defined in section 4019(a)(2) of the CARES Act. If [Entity Name] becomes a covered entity, [Entity Name] will not enter into any transaction with the TALF.

		_____ Name of Borrower
Chief Executive Officer	By:	Name: Title: E-mail: Phone: Date:
Chief Financial Officer	By:	Name: Title: E-mail: Phone: Date:

Verification

The entity named on the signature page hereof (the “**Borrower**”) wishes to participate in the Term Asset-Backed Loan Facility (the “**TALF**”) authorized by the Board of Governors of the Federal Reserve System and approved by the Secretary of the Treasury on March 23, 2020, as such authorization may be amended from time to time, under section 13(3) of the Federal Reserve Act, 12 U.S.C. § 343.

Under the TALF, which is being provided by the Federal Reserve Bank of New York (the “**FRBNY**”), to which the Department of the Treasury is providing equity, eligible borrowers may receive loans collateralized by eligible collateral.

The Borrower has made certain certifications (the “**CARES Act Certifications**”) regarding the conflict of interest requirement in section 4019 of the Coronavirus Aid, Relief, and Economic Security Act.

With respect to the CARES Act Certification, the Borrower agrees to maintain records containing the bases for the certifications (the “**File**”) and agrees to make available to the FRBNY, as promptly as practicable upon request of the FRBNY, either an attestation by an external auditor that the auditor has examined the File and has found it sufficient to support the certifications or a copy of the File for the FRBNY’s own inspection or review. If the Borrower submits an attestation by an external auditor, the

FRBNY reserves the right to request a copy of the File for its own inspection or review. The Borrower agrees to retain the File for 20 years following termination of the TALF.

Chief Executive Officer

By:

Name of TALF Borrower

Name:
Title:
E-mail:
Phone:
Date:

Chief Financial Officer

By:

Name:
Title:
E-mail:
Phone:
Date