UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 23, 2026

Tracey E. Russell
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Re: **Ally Financial Inc. - Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act of 1933**

Dear Tracey E. Russell:

This is in response to your letter dated March 23, 2026 ("Waiver Letter"), written on behalf of Ally Financial Inc. ("AFI"), related to the Commission's March 23, 2026 order against Ally Invest Advisors Inc. ("Ally Invest"), a subsidiary of AFI, pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Order"). Entry of the Order will render AFI an "ineligible issuer" under clause (1)(vi) of the ineligible issuer definition in Rule 405 of the Securities Act of 1933. AFI requests relief from that designation.

Based on the facts and representations in the Waiver Letter, we have determined that AFI has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 that it is not necessary under the circumstances that it be considered an ineligible issuer. Any different facts from those represented or Ally Invest's failure to comply with the terms of the Order would require us to revisit our determination and the Commission reserves the right, in its sole discretion, to revoke or further condition this waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/ M. Hughes Bates

M. Hughes Bates
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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March 23, 2026

Via E-mail

Office of Enforcement Liaison,
Division of Corporation Finance,
U.S. Securities and Exchange Commission,
100 F Street NE,
Washington, DC 20549.

Re: In the Matter of Ally Invest Advisors Inc.

Dear Office of Enforcement Liaison:

We write on behalf of Ally Financial Inc. ("Ally") in connection with the settlement by its subsidiary, Ally Invest Advisors Inc. ("Ally Invest"), with the United States Securities and Exchange Commission relating to *In the Matter of Ally Invest Advisors Inc*. The settlement resulted in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order") against Ally Invest.

Ally is a publicly traded company listed on the New York Stock Exchange and is a reporting company under the Securities Exchange Act of 1934. As of the date of this letter, Ally qualifies as a "well-known seasoned issuer" ("WKSI") as defined in Rule 405 of the Securities Act of 1933. Ally respectfully requests a waiver from the Division of Corporation Finance, acting pursuant to its delegated authority, or the Commission itself, determining that it is not necessary under the circumstances to consider Ally an "ineligible issuer," as defined in Rule 405 under the Securities Act, as a result of the Commission entering the Order. As discussed below, and consistent with the framework outlined in the Division's *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014), we believe there is good cause for the Division, on behalf of the Commission, or the Commission itself, to grant the requested waiver.

## I. BACKGROUND

Ally Invest is registered with the Commission as an investment adviser. On March 23, 2026, Ally Invest submitted an Offer of Settlement that consented to the

entry of the Order, without admitting or denying the findings, and which were presented by the staff to the Commission. The Order relates to Ally Invest's failure to fully and fairly disclose a conflict of interest in connection with its Cash-Enhanced no-advisory fee "robo-advisor" accounts and to provide an accurate description of the methodology used to guide the investment of the Cash-Enhanced accounts.

Ally Invest offers, among other products and services, "robo-advisor" accounts. Beginning in September 2019, Ally Invest began marketing and offering its Cash-Enhanced "no advisory fee" robo-advisor account to existing and potential clients in part to attract novice retail investors. Ally Invest allocated thirty percent of the total portfolio in each client's Cash-Enhanced account to cash, and the other seventy percent of total account assets was invested in a mix of security recommended to the client. The client cash in the Cash-Enhanced accounts was custodied by a non-affiliated clearing broker. The non-affiliated clearing broker deposited the cash at various banks, including Ally Invest's affiliated bank, to be loaned out, and interest earned on the cash deposits was paid to the non-affiliated clearing broker. The non-affiliated clearing broker, in turn, paid Ally Invest's affiliated broker-dealer a rebate, representing a portion of the interest generated by the cash in the Cash-Enhanced client accounts. The value of the rebate that Ally Invest's affiliated broker-dealer received from the non-affiliated clearing broker made up at least some of the revenue Ally Invest lost by not charging an advisory fee for the Cash-Enhanced accounts.

The Order provides that, from September 2019 until August 2025, Ally Invest failed to adequately disclose its conflict of interest associated with setting a thirty percent cash allocation for the Cash-Enhanced accounts. Because Ally Invest's affiliated broker-dealer received a rebate reflecting a portion of the interest that was generated by the cash held in the Cash-Enhanced accounts, Ally Invest had an incentive to set a higher cash allocation percentage for these accounts. Ally Invest's affiliated bank also received cash deposits from certain client accounts at the non-affiliated clearing broker, including the Cash-Enhanced accounts, and earned interest on such deposits. The incentive to set a higher cash allocation was heightened given that Ally Invest charged no advisory fees on the Cash-Enhanced accounts. The Order provides that Ally Invest never fully disclosed all material facts about its conflict of interest, including its reasons for selecting a thirty-percent cash allocation. Although Ally Invest considered several factors in setting the cash allocation at thirty percent, and advertised to clients that this allocation created a valuable cash buffer meant to balance out potential risk in the Cash-Enhanced portfolios, it failed to disclose that the thirty percent cash allocation was selected in part to make up for it not charging an advisory fee on the Cash-Enhanced accounts, or the associated conflict of interest.

In addition, the Order provides that, from September 2019 through October 2022, Ally Invest disclosed in its Forms ADV Part 2A that its "portfolio

management services [were] based on Modern Portfolio Theory." Ally Invest's statement about Modern Portfolio Theory was misleading because Modern Portfolio Theory was not used to select the cash allocation portion of the Cash-Enhanced accounts. Rather, the portfolios' cash allocation was based, in part, on Ally Invest's desire to make up for revenue lost from not charging an advisory fee on the Cash-Enhanced accounts. Instead, Ally Invest used Modern Portfolio Theory to guide the investment of the seventy percent non-cash portion of a client's account. Ally Invest failed to accurately disclose its use of Modern Portfolio Theory, including that the cash allocation representing thirty percent of the clients' portfolio was not selected by or based on Modern Portfolio Theory.

The Order finds that Ally Invest willfully violated Section 206(2) of the Advisers Act. Without admitting or denying the findings of the Order, except as to the Commission's jurisdiction over Ally Invest and the subject matter of the proceeding, Ally Invest consented to the issuance of the Order, and to cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, be censured, and to pay a civil money penalty of $500,000. Ally Invest also undertaken to notify affected investors of the settlement terms of the Order by sending a copy of the Order to affected investors and to certify, in writing, its compliance with that undertaking.

## II. DISCUSSION

A WKSI, as defined in Rule 405 of the Securities Act, is eligible to utilize significant reforms in the securities offering and communication processes that the Commission adopted in 2005.

A company that is an "ineligible issuer" loses the benefits bestowed on a WKSI. An issuer is an "ineligible issuer" if, in relevant part, "[w]ithin the past three years … the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) Determines that the person violated the anti-fraud provisions of the federal securities laws." The Order finding that Ally Invest willfully violated certain anti-fraud provisions of the federal securities laws will render Ally an "ineligible issuer" under Rule 405.

The Commission retains the authority under Rule 405 to determine "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." The Commission has delegated authority to the Division to make such a determination.

For the reasons set forth below, we respectfully submit that there is good cause for the Division, acting pursuant to its delegated authority, or the Commission, to determine that granting the waiver in this case would be consistent with the public interest and the protection of investors.

### *A. Nature of the Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures*

The findings in the Order relate to disclosures made by Ally's investment adviser subsidiary, Ally Invest, in respect of a product available to its advisory clients. The Order finds, first, that Ally Invest failed to fully and fairly disclose a conflict of interest relating to the allocation of cash versus non-cash assets in the no-advisory fee Cash Enhanced "robo-advisor" accounts. The Order also finds that Ally Invest incorrectly described the investment methodology used to guide the investment of those accounts.

The conduct described in the Order does not call into question the reliability of Ally's current or future public disclosures as an issuer of securities and did not involve disclosures in respect of Ally's financial statements. In addition, the Order does not find any weaknesses or violations associated with the disclosure and other internal controls maintained by Ally in connection with the preparation and review of its financial statements and Commission filings under the Securities Act and the Exchange Act.

### *B. The Order is Not Criminal in Nature and Does Not Involve Scienter-Based Fraud*

The Order does not involve a criminal conviction and does not involve violations of the scienter-based anti-fraud provisions of the securities laws. Ally is not subject to the higher standard for showing good cause.

### *C. The Persons Responsible for the Misconduct*

The conduct described in the Order relates to regulatory disclosures made by Ally Invest. The Order found that Ally Invest breached its fiduciary duties by failing to fully and fairly disclose in its regulatory filings the conflict of interest related to the manner of and incentives in allocating the cash portion of the Cash Enhanced no-advisory fee "robo-advisor" accounts. The Order also relates to Ally Invest's incorrect description of the methodology used to select the cash portion of the Cash Enhanced account portfolios. These disclosures were prepared by Ally Invest. No employees of Ally responsible for preparation of its financial statements and filings with the Commission under the Securities Act and the Exchange Act as an issuer or members of Ally's Board

of Directors knew of or were involved in the conduct described in the Order, nor did they ignore any red flags with respect to such conduct.

The Order does not call into question the ability of Ally to provide reliable disclosures, currently and in the future, in any Commission filings under the Securities Act and the Exchange Act as an issuer of securities.

***D. Duration of the Misconduct***

The violations reflected in the Order occurred from September 2019 to August 2025.

***E. Remedial Steps***

As the Order recognizes, Ally Invest updated its Form ADV Part 2A to disclose the conflict of interest related to the allocation of cash held in the Cash-Enhanced accounts, and to correct the description of the methodology used to guide the investment of the Cash-Enhanced portfolios. Specifically, in October 2022, Ally Invest updated its Form ADV Part 2A to disclose that it constructed only "the invested (*i.e.*, non-cash) portions of [its] portfolios based on Modern Portfolio Theory." In August 2025, Ally Invest updated its Form ADV Part 2A to provide disclosure concerning its conflict of interest on the Cash-Enhanced Robo Portfolio accounts.

Ally Invest's written compliance procedures, last updated in March 2025, are reasonably designed to ensure compliance with the securities laws, including in respect of disclosures of existing or potential conflicts of interest in its regulatory filings, and conducts regular reviews of disclosures to ensure that existing disclosures are, and remain, accurate. The procedures provide that Ally Invest is to "make every effort to keep its clients informed of any information pertinent to the overall safety or status of accounts, or that will be useful for the overall financial knowledge and understanding of the client. [Ally Invest] will observe its obligations regarding complete and fair disclosure to its clients regarding any existing or potential conflicts of interest that potentially impact any trading activity on behalf of its clients." The procedures further reiterate the obligation to disclose all material facts concerning potential conflicts that may arise and that, if and when conflicts of interest and other material information in the regulatory filings become inaccurate, the Form ADV be updated promptly (but in any event, within 30 days).

In addition, Ally Invest holds a variety of cross-functional meetings on a regular basis among the compliance, legal, and business teams, including monthly business updates, Automated Investing operations and compliance sessions, form and filing reviews, and compliance and supervision meetings. These discussions provide

opportunities to identify material changes and potential conflicts of interest. In respect of Form ADV and Form CRS disclosures specifically, on a monthly basis, Ally Invest's Chief Compliance Officer ("CCO") reviews the adviser's regulatory filings (including the Form ADV and Form CRS) to review for accuracy and completeness and to consider whether any material updates are necessary. Where material changes to disclosures are identified, the CCO will work with the appropriate team to prepare and submit the revised disclosure.

Ally's audit, compliance testing, and risk teams also conduct regular assessments of Ally Invest's policies and procedures and collaborate with Ally Invest's business and compliance teams to develop a comprehensive risk and controls matrix. These discussions provide opportunities to identify material changes and potential conflicts of interest. The compliance, legal, and business teams use the insights from these meetings to draft and review updates, ensuring any material changes and disclosure related conflicts of interest are properly reflected in the disclosures.

***F. Previous Actions***

Ally has neither previously requested nor received any WKSI waivers from the Commission.

***G. Impact on Issuer if Request is Denied***

If the Commission denies Ally's request for a waiver, the impact on Ally would be a disproportionate hardship in light of the nature of the misconduct and could result in burdens and limitations on Ally that are not necessary for the public interest or for the protection of investors.

Ally is a large financial institution that relies on automatic shelf registration statements to conduct its ordinary course business transactions. The loss of Ally's status as an eligible issuer could, in certain respects described below, reduce Ally's flexibility in raising capital, which it relies on when considering its capital, liquidity, and contingency planning, including with respect to conducting its operations and complying with certain banking regulations such as regulations relating to Ally's level of capital and liquidity.

Ally has made, and continues to make, regular use of its WKSI status. Since the filing of Form S-3ASR with the Commission in October 2022, Ally has offered $2.25 billion in debt securities, including its senior notes, subordinated notes, preferred stock, and depositary shares. Ally also uses its WKSI status to register an indeterminate amount of the Ally Financial Term Notes and has offered over $164 million in offerings conducted off the August 2024 S-3ASR. The proceeds from these offerings have been

utilized by Ally for capital deployment, purchase of receivables, making loans, and the repayment or repurchase of existing indebtedness and the reduction of short-term borrowings or for investment in short-term securities.

As an ineligible issuer, Ally would lose the flexibility (i) to file automatic shelf registration statements to register an indeterminate amount of securities, (ii) to offer additional securities of the classes covered by the registration statement without filing a new registration statement, (iii) to omit certain information from the prospectus, and (iv) to take advantage of the "pay-as-you-go" fees.

## III. CONCLUSION

Ally respectfully submits that the Division, on behalf of the Commission, or the Commission itself, should grant the request for this waiver because the Order does not find violations of scienter-based fraud or involve criminal conduct. The Order found no weaknesses in Ally's internal controls and the violations did not involve misstatements or omissions in Ally's disclosures or financial statements. In light of these considerations, Ally respectfully submits that it has shown good cause that it is not necessary under the circumstances that Ally be considered an "ineligible issuer." Accordingly, Ally requests that the Division, on behalf of the Commission, or the Commission itself make the determination that there is good cause for Ally not be considered an "ineligible issuer" as a result of the Order.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at 212.558.3289.

Sincerely,

Tracey Russell

cc: Steven Peikin (Sullivan & Cromwell LLP)