

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34043; 812-15164

Development Bank of Japan Inc.

October 5, 2020

AGENCY: Securities and Exchange Commission (the “Commission”).

ACTION: Notice.

Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from all provisions of the Act.

Summary of Application: Applicant, a policy and development finance organization established by the government of Japan (the “Japanese Government”), requests an order exempting it from all provisions of the Act in connection with the offer and sale of its debt securities in the United States.

Applicant: Development Bank of Japan Inc. (“Applicant”).

Filing Dates: The application was filed on September 25, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at Secretarys-Office@sec.gov and serving applicant with a copy of the request by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2020, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service.

Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may

request notification by e-mailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicant: grp_dbond@dbj.jp.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicant's Representations:

1. The Applicant is a policy and development finance organization established in October 2008 by the Japanese Government pursuant to the Development Bank of Japan Inc. Act (the "DBJ Act"). The Applicant's primary mission is contributing to the sustainable growth of the Japanese economy, promoting stable and vital financial markets in Japan and enhancing global competitiveness of Japanese businesses. The Applicant furthers its mission primarily through the provision of long-term funding to enterprises and projects generally in line with the policy objectives of the Japanese Government, through loan financing and other financing methods (including equity investments).

2. In serving its mission, the Applicant offers a broad range of financial products and services to its clients similar to those offered by Japanese commercial banks. In recent years, the Applicant has also undertaken specific mandates in two key Japanese

Government-sponsored funding initiatives: (i) “Crisis Response Operations,” a program designed to provide appropriate financing to large- and medium-sized enterprises that are temporarily experiencing a downturn in business performance and funding difficulties due to a “crisis” such as turmoil in the domestic or global financial system, large-scale natural disasters, acts of terrorism or medical epidemics, and (ii) “Special Investment Operations,” a temporary investment program designed to supplement and encourage private-sector financing to support growth initiatives of enterprises that contribute to self-reliant development of regional economies, contribute to development of markets for growth capital, or promote the competitiveness of Japanese enterprises generally.

3. As of March 31, 2020, the Applicant’s most recently completed fiscal year end, a majority of the Applicant’s assets consisted of loans and other securities such as equity in other entities and a variety of debt instruments. Because such loans and securities could be considered “investment securities” within the meaning of section 3(a)(1)(C) of the Act, the Applicant may be considered an investment company, and it requests an exemption from all provisions of the Act.

4. The Japanese Government currently owns 100% of the Applicant’s issued share capital. However, the DBJ Act (including successive amendments thereto) contemplates a plan to fully privatize the Applicant over time. Specific timing for commencing or completing the Applicant’s privatization has not been determined, and under partial amendments to the DBJ Act effective in 2015, the Japanese Government is obligated to hold more than one-half of the total issued share capital of the Applicant until the completion of its Special Investment Operations, which is currently scheduled for March 31, 2031, and more than one-third of the Applicant’s issued share capital for an

indefinite period with a view to ensuring the sufficient and appropriate implementation of the Crisis Response Operations. The Applicant notes that the anticipated privatization of the Applicant, as set forth in the DBJ Act, is a part of broader efforts to reform and streamline policy finance and special public institutions in Japan, such as the Applicant, that began in the early 2000s.

5. As described more fully in the application, the Applicant, as a development bank, is substantially engaged in banking activity that is customary for commercial banks in Japan. However, because the Applicant does not engage in deposit-taking activities, it is not considered a commercial bank under Japanese law. Despite the formal differences in applicable rules and regulations, the Applicant believes that it is subject to a set of regulatory requirements that, in combination with the Applicant's voluntary policies, are functionally equivalent to that applied to Japanese commercial banks in terms of the regulation of a bank's safety and soundness and financial risk exposures. The Applicant believes the DBJ Act's supervisory provisions, combined with supplemental oversight by multiple Japanese government agencies and regulatory authorities and the Applicant's voluntary compliance with key prudential regulatory metrics, constitute a set of regulatory protections that meet or exceed those applicable to Japanese commercial banks. In particular, the Applicant (i) is subject to extensive oversight, supervision and regulation by the Japanese Government, primarily by the Minister of Finance and the Commissioner of the Financial Services Agency (the "FSA") (Japan's umbrella financial regulator and primary bank regulator), including on-site inspections conducted by the FSA in a manner similar to those conducted for commercial banks in Japan (i.e., in accordance with principles and procedures for bank examinations established in FSA guidance documents),

(ii) maintains internal controls and risk management systems intended to be consistent with expectations set by the FSA, such as a credit quality “self-assessment” system, in line with domestic industry best practices, and (iii) voluntarily monitors and controls its balance sheet and risk exposures at levels that meet or exceed regulatory requirements applicable to Japanese commercial banks as part of their prudential banking regulation, such as risk-based capital and leverage requirements under Basel III and credit quality disclosure standards under Japanese banking law.

6. The Applicant procures funds by borrowing from the Japanese Government and private financial institutions, issuing debt securities in the Japanese and international capital markets and accumulating funds through its business operations, primarily loan recoveries. The Applicant uses such funds to extend loans to and make other investments in primarily Japanese but also international enterprises and projects in order to fulfill its primary mission. In addition, since the Applicant’s establishment in 2008, the Japanese Government has made capital contributions in the aggregate amount of ¥631.0 billion (approximately \$5.8 billion), primarily to fund the Crisis Response Operations and Special Investment Operations.

7. The Applicant proposes to issue and sell its debt securities not guaranteed by the Japanese Government in the United States, including under its Global Medium Term-Notes (GMTN) program, from time to time. The Applicant does not intend to offer, issue or sell any securities in public offerings under the Securities Act of 1933 (the “Securities Act”), and any offers or sales of its debt securities in the United States or to U.S. persons would be made in transactions exempt from the registration requirements of the Securities Act, including private placements to institutional accredited investors and transactions in

which the securities may be resold to “qualified institutional buyers” as contemplated by rule 144A under the Securities Act. The Applicant intends to use the proceeds of any such issuance and sale of debt securities as an additional source of funding for its general operations as set forth in the DBJ Act and to extend loans, make investments and provide advisory and consulting services in line with its primary mission as a policy and development financial organization.

Applicant’s Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an “investment company” to include any issuer engaged in the business of investing, reinvesting, owning, holding or trading in securities, and that owns or proposes to acquire investment securities having a value exceeding 40% of the issuer’s total assets. Section 3(a)(2) of the Act defines “investment securities” to include all securities except Government securities, securities issued by employees’ securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. The Applicant states that, as of March 31, 2020, it had total assets of ¥17,419,402 million (non-consolidated basis), of which loans accounted for ¥12,521,358 million (71.9%) and the Applicant’s securities portfolio for ¥2,400,948 million (13.8%). Such loans and securities could be construed as “investment securities” within the meaning of section 3(a)(1)(C) of the Act, thus potentially rendering the Applicant a *prima facie* “investment company” under the Act. As a result, the Applicant could be deemed to be an “investment company” under section 3(a)(1)(C) of the Act.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act, if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Rule 3a-6 under the Act excludes foreign banks from the definition of an investment company under the Act. A “foreign bank” is defined in the rule to include a banking institution “engaged substantially in commercial banking activity” which in turn is defined to include “extending commercial and other types of credit, and accepting demand and other types of deposits.” The Applicant represents that it is functionally similar to a “foreign bank” as defined under rule 3a-6, insofar as it (i) offers financial services and issues financial products similar to those offered and issued by traditional commercial banks and (ii) is subject to extensive oversight, supervision and regulation by the Japanese Government. However, because the Applicant does not engage in deposit-taking activities, it is not considered a commercial bank under Japanese law. Therefore, the Applicant states that there is uncertainty as to whether the rule 3a-6 exemption would be deemed to apply.

5. The Applicant also believes that the rationale of Congress and the Commission in promulgating rules under the Act in exempting foreign financial institutions applies to the Applicant. The Applicant represents that it is subject to oversight by a suite of Japanese government agencies and regulatory authorities, and conducts its operations in a manner that is at least as rigorous as, if not more rigorous than, Japanese commercial banks subject to prudential bank regulatory financial standards. The Applicant is subject to a comprehensive supervisory and regulatory regime established by the

Japanese Government as described in the application. The Applicant is subject to the general safety and soundness prudential supervision and regulation similar to that applicable to commercial banks in Japan pursuant to the DBJ Act, including on-site inspections conducted by the Commissioner of the FSA, which is also the primary supervisor of Japanese commercial banks via delegated authority under the Banking Act of Japan (the “Banking Act”). The Applicant also complies with certain of provisions of the Banking Act or the Act on Emergency Measures for the Revitalization of Financial Functions Act on a voluntary basis in a manner that is similar to a Japanese commercial bank as part of risk management processes and methods implemented and maintained by the Applicant in order to ensure sound and appropriate management of its operations. Accordingly, the Applicant represents that its operations do not lend themselves to the abuses against which the Act is directed, and states that it believes it satisfies the standards for relief under section 6(c) of the Act.

Applicant’s Conditions

The Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. In connection with any offering by the Applicant of its debt securities in the United States, the Applicant will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to such debt securities instituted in any state or federal court in the Borough of Manhattan, The City of New York, New York. The Applicant will expressly submit to the jurisdiction of New York State and United States Federal courts sitting in the Borough of Manhattan, The City of New York, New York with respect to any such suit, action or proceeding. The Applicant

also will waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect thereof have been paid. No such submission to jurisdiction or appointment of agent for service of process will affect the right of a holder of any such security to bring suit in any court which shall have jurisdiction over the Applicant by virtue of the offer and sale of such securities or otherwise.

2. The Applicant undertakes to provide to any person to which it offers its debt securities in the United States disclosure documents that are at least so comprehensive in their description of the Applicant and its business as those which may be used by comparable U.S. issuers in similar U.S. offerings of such securities and that contain the latest available audited annual financial statements (and, if available, reviewed interim financial statements) of the Applicant. The Applicant further undertakes to ensure that any underwriter or dealer through whom it makes such offers will provide such disclosure documents to each person to whom such offers are made prior to any sale of securities to such offeree. Such documents will be updated promptly to reflect any material change in the Applicant's financial status and shall be at least as comprehensive as offering memoranda customarily used in similar offerings in the United States. Any offering of the Applicant's securities in the United States shall comply with applicable U.S. securities and anti-fraud laws and regulations.

3. The Applicant shall rely upon the order so long as (i) the Applicant's activities conform in all material respects to the activities described in the application, (ii) the Applicant continues to be regulated by the Minister of Finance, the FSA or other

applicable Japanese regulatory authorities as a policy and development financial organization as described in the application, (iii) the Applicant continues to follow, in all material respects, the voluntary compliance measures described in the application, (iv) there is no material change in the Applicant's primary mission or how it is regulated as compared to today, and (v) the Japanese Government continues to hold at least 10% of the Applicant's issued share capital.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier
Assistant Secretary