

The U.S. Federal Reserve and U.S. Treasury Department Announce Details Regarding the Term Asset-backed Securities Loan Facility

Introduction

Recently, the U.S. Federal Reserve (the “**Federal Reserve**”) disclosed important details relating to the operation of its Term Asset-Backed Securities Loan Facility (“**TALF**”). On February 6, 2009, the Federal Reserve announced revisions to the Terms and Conditions (the “**TALF Terms and Conditions**”), originally unveiled on December 19, 2008, under which the Federal Reserve Bank of New York (the “**New York Fed**”) would make loans under TALF. TALF, which has not yet been implemented, was initially intended to provide loans from the New York Fed to investors in asset-backed securities (“**ABS**”) secured by automobile loans, student loans, credit card loans and small business loans in an aggregate amount of up to \$200 billion. On February 10, 2009, U.S. Treasury Secretary Timothy Geithner announced the joint effort of the U.S. Treasury Department (the “**Treasury Department**”) and the Federal Reserve, known as the “**Consumer & Business Lending Initiative**,” that will, among other things, increase the aggregate amount of funds available under TALF from \$200 billion to as much as \$1 trillion and expand the scope of TALF to include loans to purchasers of commercial mortgage-backed securities (“**CMBS**”) secured by commercial mortgage loans that meet soon-to-be-released criteria.

The Federal Reserve also released forms of certain of the documents that will be required to be executed in connection with obtaining TALF loans: (a) a form of Master Loan and Security Agreement (the “**TALF Master Loan and Security Agreement**”), which sets forth the terms under which a borrower may, in accordance with the TALF Terms and Conditions, obtain loans from the New York Fed; (b) a form of Certification as to TALF Eligibility (the “**TALF Certification**”), under which issuers and sponsors of ABS and CMBS will be required to certify that the underlying credit exposures are TALF-eligible; (c) a form of Indemnity Undertaking (the “**TALF Indemnity**”) under which sponsors of eligible ABS and CMBS and, in certain cases, their direct or indirect ultimate parents, will be required to indemnify the New York Fed and TALF LLC (as defined below), and each of their affiliates, successors and assignees, for any damages arising out of any misrepresentation or breach of warranty or undertaking made under a TALF Certification; and (d) a form of Auditor Attestation (the “**Auditor Attestation**”) under which an auditor will be required to attest that the related ABS or CMBS, as the case may be, are eligible collateral under TALF.

This client alert summarizes the TALF Terms and Conditions, the TALF Master Loan and Security Agreement, the TALF Certification, the TALF Indemnity, the Auditor Attestation and certain other information regarding TALF disseminated by the Federal Reserve and the New York Fed as of February 21, 2009. We will continue to update our clients regarding the expansion of TALF as additional details of the Consumer & Business Lending Initiative and TALF are announced by the Treasury Department and the Federal Reserve.

The Problem — A Paucity of Available Credit for Consumers and Businesses

The interest rate spreads on the highest-rated tranches of ABS secured by automobile loans, student loans and credit card loans (collectively, “**Consumer Loans**”), and small business loans, sponsored by the U.S. Small Business Administration (the “**SBA**”) and fully guaranteed as to principal and interest by the full faith and credit

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of the U.S. government (“**SBA Loans**”), have widened to levels that do not correspond with the levels of default the ABS industry expects for such Consumer Loans and SBA Loans. Likewise, spreads on CMBS secured by commercial mortgage loans (“**Commercial Mortgage Loans**”) have also widened. The Federal Reserve and Treasury Department determined that the inability of ABS and CMBS investors to obtain term financing to buy ABS and CMBS in the secondary markets from traditional financing sources has been at least partially responsible for the widening of spreads.

The widening spreads are indicative of a significant reduction in demand for ABS secured by Consumer Loans and SBA Loans and CMBS secured by Commercial Mortgage Loans since the end of the second quarter of 2008. The ABS markets historically have financed a substantial portion of Consumer Loans and SBA Loans, and the CMBS market, likewise, financed most Commercial Mortgage Loans. The reduction in demand for ABS and CMBS, consequently, has resulted in a drastic decline in the volume of such ABS and CMBS issuances and a concomitant decline in the availability of credit to U.S. consumers and businesses.

The Proposed Solution — Increase Available Financing Through TALF

The aim of TALF is to increase the availability of credit to U.S. consumers and businesses by facilitating the renewed issuance of ABS secured by Consumer Loans and SBA Loans, and CMBS secured by Commercial Mortgage Loans. TALF will provide financing for investors to purchase such ABS and CMBS from banks and dealers in the primary and the secondary markets. The Federal Reserve and Treasury Department anticipate that ABS and CMBS investors will be willing to accept reduced spreads on ABS secured by Consumer Loans and SBA Loans and CMBS secured by Commercial Mortgage Loans in the secondary market because TALF will be able to provide these investors with access to attractive financing, similar to that once provided by other sources. The Federal Reserve and Treasury Department expect that TALF financings and the resultant decline in spreads should increase the volume of issuances of ABS and CMBS. As a result of the anticipated increase in volume of issuances, lenders will be able to obtain additional funds from the sale of their Consumer Loans, SBA Loans and Commercial Mortgage Loans into ABS and CMBS structures, and such funds can then be used by the lenders to make new Consumer Loans, SBA Loans and Commercial Mortgage Loans to consumers and businesses.

Treasury Secretary Geithner stated that the Treasury Department will continue to consult with the Federal Reserve on the possible further expansion of TALF to include other asset classes as eligible collateral for TALF loans, including certain residential mortgage-backed securities and assets collateralized by corporate debt.

Legal Authorization

The Federal Reserve Board has given the New York Fed authority under Section 13(3) of the Federal Reserve Act (Discounts For Individuals, Partnerships, and Corporations) to lend up to \$1 trillion to eligible ABS and CMBS investors in the form of term loans that will be fully secured by Eligible Collateral (as defined below) pledged by such eligible investors. The \$1 trillion program size represents an increase from the \$200 billion authorized in November 2008. The Federal Reserve has stated that the expansion of TALF will be supported by the provision by the Treasury Department of additional funds from the Troubled Asset Relief Program (“**TARP**”).

Timing of Implementation and Duration

In late February 2009, the Federal Reserve will announce the date that the New York Fed will commence operations of TALF. The New York Fed will cease making new loans under TALF on December 31, 2009, or on such earlier date as loans totalling the maximum program size of TALF have been made (the “**Termination Date**”). Any loans made under TALF prior to the Termination Date will remain within TALF until the maturity date applicable to any such loans.

The TALF Facility

Generally, TALF loans will have a term of three (3) years and will be non-recourse to the borrowers, except in respect of breaches of representations, warranties and covenants in the TALF Master Loan and Security Agreement. Interest on TALF loans will be payable monthly, and principal will be pre-payable at any time, in whole or in part, at the option of the borrower without penalty. If a borrower makes a partial pre-payment, Eligible Collateral securing its loan will be released on a *pro rata* basis, taking into consideration minimum ABS or CMBS denominations, as the case may be.

The Federal Reserve believes that the ability of ABS and CMBS investors to lock in longer-term financing under TALF, while having the option to pre-pay such financing if credit conditions improve, should incentivize ABS and CMBS investors to begin purchasing Eligible Collateral at lower spreads than currently exist in the secondary markets.

Eligible Collateral

A borrower must pledge Eligible Collateral to the New York Fed in order to receive a loan under TALF. The Federal Reserve and Treasury Department have not yet provided details regarding the criteria with which CMBS must conform in order to be considered Eligible Collateral. However, the criteria for ABS have been announced.

In order to qualify as “**Eligible Collateral**,” ABS must satisfy the following conditions:

Dollar-Denominated Cash Assets. The ABS pledged by a borrower must be U.S. dollar-denominated cash ABS. Synthetic or other derivative ABS will not qualify as Eligible Collateral.

Highest Investment Grade Rating. The ABS, other than ABS secured by SBA Loans or otherwise guaranteed as to principal and interest by the full faith and credit of the U.S. government, must have a long-term or short-term credit rating in the highest investment-grade rating category from two or more major, nationally-recognized statistical rating organizations (each, an “NRSRO”) and cannot have a credit rating of below the highest investment-grade rating category from any such NRSRO. The ABS may not obtain such credit ratings based on the benefit of a third-party guarantee, and the ABS cannot then be on review or watch for downgrade by any NRSRO. ABS secured by SBA Loans generally will not require an explicit credit rating because the underlying credit exposures are fully guaranteed as to principal and interest by the full faith and credit of the U.S. government. Likewise, any ABS sponsored by the SBA that are fully guaranteed as to principal and interest by the full faith and credit of the U.S. government will not require an explicit credit rating.

U.S. Domiciled Obligors. Ninety-five percent (95%) or more of the dollar amount of the credit exposures underlying the ABS securing a TALF loan must derive from U.S.-domiciled obligors.

Underlying Credit Exposures — Consumer Loans and SBA Loans. The underlying credit exposures of the ABS must be Consumer Loans or SBA Loans. The Federal Reserve noted that retail loans and leases relating to cars, light trucks, recreational vehicles and motorcycles, and auto dealer floorplan loans are examples of the type of underlying credit exposures that will qualify as collateral for eligible automobile ABS. Commercial, government and rental fleet leases of cars, trucks and light trucks will not qualify. Likewise, federally guaranteed student loans (including consolidation loans) and private student loans are examples of the type of underlying credit exposures that will qualify as collateral for eligible student loan ABS. SBA Loans will include loans, debentures and pools originated under the SBA’s 7(a) and 504 programs, provided they are fully guaranteed as to principal and interest by the full faith and credit of the U.S. government.

Origination Date of Underlying Credit Exposures. The Federal Reserve established the following cut-off dates for each type of credit exposure underlying ABS that will be eligible for TALF financing:

- a. **Automobile Loans.** Eighty-five percent (85%) or more of the dollar amount of the credit exposures underlying the eligible automobile loan ABS (except auto dealer floorplan ABS) must have been originated on or after October 1, 2007. Eligible auto dealer floorplan ABS must be issued to refinance existing auto dealer floorplan ABS maturing in 2009 and must be issued in amounts no greater than the amount of the maturing ABS. Eligible auto loan ABS must have an expected life of no more than five years.
- b. **Student Loans.** Eighty-five percent (85%) or more of the dollar amount of the credit exposures underlying the eligible student loan ABS must have had a first disbursement date on or after May 1, 2007.
- c. **SBA Loans.** SBA pool certificates ("**SBA Pool Certificates**") and development company participation certificates ("**Development Company Participation Certificates**") must have been issued on or after January 1, 2008, regardless of the dates of the underlying loans or debentures. The SBA-guaranteed credit exposures underlying all other eligible SBA Loan ABS must have been originated on or after January 1, 2008.
- d. **Credit Card Loans.** Eligible credit card ABS must have an expected life of no more than five years and must be issued to refinance existing credit card ABS maturing in 2009. In addition, such ABS must be issued in amounts no greater than the amount of the maturing credit card ABS.

Third-Party Borrower — Borrowers and Affiliates Cannot Originate or Securitize Underlying Loans. The loans that secure ABS must be originated and securitized by a third party that is unrelated to the borrower. ABS that is backed by loans originated by a borrower that desires to borrow under TALF or an affiliate of such borrower will not be eligible to receive TALF financing. An "**affiliate**" of a borrower is defined as "any company that controls, is controlled by, or is under common control with the borrower." For this purpose, a person or company controls a company if it (i) owns, controls or holds securities with power to vote twenty-five percent (25%) or more of a class of voting securities of the company; or (ii) consolidates the company for financial purposes.

Compliance with the Executive Compensation Requirements of the Emergency Economic Stabilization Act of 2008. All sponsors (as defined by Regulation AB of the Securities Act of 1933, as amended) of the securitization that issues the Eligible Collateral, or the applicable entity specified in forthcoming TALF certification documents, must have agreed to comply with, or already be subject to, the executive compensation requirements in Section 111(b) of the Emergency Economic Stabilization Act of 2008. The chief executive officer or other authorized representative of the sponsor (or other applicable entity) must complete the executive compensation certification form before any of the sponsor's or entity's ABS can be offered as Eligible Collateral. Moreover, in order to remain compliant with the executive compensation requirements, each sponsor or applicable entity must certify compliance on an annual basis.

Date of Issuance. Except for SBA Pool Certificates or Development Company Participation Certificates, Eligible Collateral must be issued on or after January 1, 2009, but need not be issued on the same day the investor borrows from TALF.

DTC. Eligible Collateral will include only ABS that are cleared through the Depository Trust Company.

May Include U.S. Guaranteed Cash ABS. Eligible Collateral may also include U.S. dollar-denominated cash ABS sponsored by the SBA that are, or for which all of the underlying credit exposures are, fully guaranteed as to principal and interest by the full faith and credit of the U.S. government.

Fixed and Floating Rate ABS. Both fixed and floating rate ABS will be eligible for financing under TALF.

Maturity. There is no minimum maturity limit for Eligible Collateral that can collateralize TALF loans. If the maturity of the Eligible Collateral is shorter than the 3-year maturity of the TALF loan, the TALF loan will mature upon maturity of the collateral for that loan.

A borrower may pledge any combination of eligible ABS as collateral for a single TALF Loan. However, a fixed-rate ABS must be pledged against a fixed-rate loan and a floating-rate ABS against a floating-rate loan.

A borrower will not be permitted to substitute collateral during the term of its TALF loan and will not be subject to re-margining or mark-to-market requirements that would require a borrower to pledge additional collateral following the date the New York Fed makes such a loan to the borrower.

Eligible Borrowers

TALF will be available to all U.S. companies (as defined below) that own Eligible Collateral and maintain an account relationship with a primary dealer. An entity will be considered a “**U.S. company**” for the purposes of qualifying as an eligible borrower under TALF if it is (a) a business entity or institution that is organized under the laws of the United States or a political subdivision or territory thereof (“**U.S.-organized**”) and conducts significant operations or activities in the United States (regardless of whether any such entity has a parent company that is not U.S.-organized), including any U.S.-organized subsidiary of such an entity; (b) a U.S. branch or agency of a foreign bank (other than a foreign central bank) that maintains reserves with a Federal Reserve Bank; or (c) an investment fund that is U.S.-organized and managed by an investment manager that has its principal place of business in the United States.

Notwithstanding the foregoing, a U.S. company excludes any entity that is controlled by a foreign government or is managed by an investment manager controlled by a foreign government. For purposes of TALF, an entity is deemed to be controlled by a foreign government if, among other things, the government owns, controls or holds with power to vote twenty-five percent (25%) or more of a class of voting securities of the entity.

TALF is intended to provide term financing for purchasers of ABS and CMBS, not issuers of ABS or CMBS. However, an issuer of ABS or CMBS will be permitted to participate in TALF in the event such issuer purchases Eligible Collateral in the secondary market.

Use of Eligible Collateral Proceeds under TALF

All cash principal proceeds of the Eligible Collateral pledged under TALF must be used by a borrower to reduce the principal amount of the borrower’s TALF loan in proportion to the TALF loan’s original loan-to-value ratio (e.g. if the original loan-to-value ratio was ninety percent (90%), then ninety percent (90%) of any remittance of principal must immediately be repaid to the New York Fed).

Borrowers are not required under TALF to allocate interest payments from Eligible Collateral to the payment of accrued interest on the related TALF loan. Consequently, a borrower may use such interest payments to, among other things, pay for operating expenses and/or make periodic distributions to its investors during the term of the TALF loan. A borrower will have a grace period of 30 days during which to pay interest on a TALF loan, if

the net interest on the pledged Eligible Collateral is not sufficient to cover the interest payment associated with the TALF loan. After the grace period, if the loan remains delinquent, the New York Fed will enforce its rights with respect to the pledged Eligible Collateral.

Borrower Request Procedures

The New York Fed will announce monthly TALF loan subscription and settlement dates. Each borrower that requests to receive a loan from TALF must use a primary dealer as its agent to access TALF.

On each subscription date, borrowers that are interested in borrowing under TALF may request one floating-rate and/or one fixed-rate TALF loan by indicating for each loan the Eligible Collateral they expect to pledge, the desired loan amount and the desired interest rate format, be it fixed or floating. The minimum size for each TALF loan will be \$10 million.

Subject to its sole discretion to reject a borrower's request, the New York Fed will disburse proceeds of a TALF loan to any borrower upon the receipt by one of the New York Fed's custodian banks of the Eligible Collateral being pledged by the borrower for the applicable TALF loan. The New York Fed intends to develop procedures to scrutinize potentially high-risk collateral that borrowers propose to pledge as security for TALF loans.

Pricing and "Haircuts"

Borrowers will be able to choose either a fixed or floating interest rate on TALF loans. The fixed interest rate will be 100 basis points over the 3-year Libor swap rate, and the floating interest rate will be 100 basis points over 1-month Libor. The New York Fed will also assess an administrative fee equal to five basis points of the loan amount on the settlement date of each loan transaction.

Under TALE, the New York Fed will lend to each borrower an amount equal to the market value (as calculated in accordance with the TALF Master Loan and Security Agreement) of the pledged Eligible Collateral minus a "haircut." The New York Fed has not disclosed the haircuts for CMBS. However, the preliminary haircuts for ABS are as follows:

Sector	Subsector	ABS Expected Life (years)						
		0-1	1-2	2-3	3-4	4-5	5-6	6-7
Auto	Prime retail lease	10%	11%	12%	13%	14%		
Auto	Prime retail loan	6%	7%	8%	9%	10%		
Auto	Subprime retail loan	9%	10%	11%	12%	13%		
Auto	Floorplan	12%	13%	14%	15%	16%		
Auto	RV/motorcycle	7%	8%	9%	10%	11%		
Bank Card	Prime	5%	5%	6%	7%	8%		
Bank Card	Subprime	6%	7%	8%	9%	10%		
Retail Card	Prime	6%	7%	8%	9%	10%		
Retail Card	Subprime	7%	8%	9%	10%	11%		
Student Loan	Private	8%	9%	10%	11%	12%	13%	14%
Student Loan	Government guaranteed	5%	5%	5%	6%	7%	8%	9%
Small Business	SBA loans	5%	5%	5%	5%	6%	7%	8%

For ABS with expected lives beyond seven (7) years, haircuts will increase by one percentage point for each additional year of expected life beyond seven years.

The Federal Reserve has stated that it will periodically review and, if appropriate, adjust the interest rate spread and haircuts for new TALF loans, consistent with the policy objectives of TALF.

Losses Related to Eligible Collateral

TALF has been structured so that any losses related to Eligible Collateral will be shared by the related borrower, the Treasury Department and the Federal Reserve in the following manner:

Borrowers. Because a TALF loan will be structured as a non-recourse loan to the borrower, a borrower's risk of loss on any Eligible Collateral pledged as collateral for a TALF loan will be limited, and the first loss related to any such Eligible Collateral will be borne by such borrower in an amount up to the haircut applied to the class of assets that secures the Eligible Collateral.

Treasury Department. In the event that any Eligible Collateral incurs losses that exceed the loss of the borrower described above, the related borrower will be permitted to put the Eligible Collateral to the New York Fed in full satisfaction of the borrower's obligations to pay to the New York Fed the principal and interest on the related TALF loan. The New York Fed in turn will sell any such Eligible Collateral pursuant to a forward purchase agreement to a special purpose vehicle ("TALF LLC") that the New York Fed will create for the sole purpose of buying, selling and managing any Eligible Collateral acquired under TALF. TALF LLC will utilize the proceeds from subordinated debt issued by TALF LLC to the Treasury Department under TARP ("**TARP Subordinated Loans**") to purchase such Eligible Collateral. The amount of any such TARP Subordinated Loans will not exceed \$20 billion over the term of TALF. Any losses incurred by Eligible Collateral that exceed the haircut applied to the underlying assets of such Eligible Collateral will be allocated as a credit-related loss to the outstanding principal balance of the TARP Subordinated Loan made by the Treasury Department to TALF LLC. As a result, the Treasury Department's aggregate loss for all Eligible Collateral financed under TALF will not exceed \$20 billion.

The Federal Reserve. Any losses related to Eligible Collateral in excess of the losses borne by the related borrower and the Treasury Department described above will be borne by the Federal Reserve. In the event TALF LLC is required to purchase in excess of \$20 billion of Eligible Collateral that borrowers have put to the New York Fed, the New York Fed has agreed to lend additional funds to TALF LLC to finance any such purchases (the "**TALF Senior Loans**"). Any such loans made by the New York Fed to TALF LLC will be senior to the TARP Subordinated Loans and secured by all the assets of TALF LLC.

In the event that any residual amounts remain in TALF LLC following the repayment of any outstanding TARP Subordinated Loans and TALF Senior Loans, such amounts will be shared equally between the New York Fed and the Treasury Department.

TALF Documentation and Offering Document Disclosure

TALF Master Loan and Security Agreement. The TALF Master Loan and Security Agreement will be executed by and among the New York Fed, certain primary dealers on behalf of themselves and their respective customers who will borrow under TALF, and the Bank of New York Mellon, as administrator and custodian. The TALF Master Loan and Security Agreement sets forth the terms under which a borrower may, in accordance with the TALF Terms and Conditions, obtain loans from, incur obligations to, and pledge collateral to the New York Fed, in each case through the services of the primary dealer serving as such borrower's agent in connection with TALF loans. The following provisions in the TALF Master Loan and Security Agreement are particularly noteworthy:

- a. **Representations and Warranties.** The representations and warranties of a borrower include, among other representations and warranties, representations and warranties to the effect that: (i) the borrower is an eligible borrower under TALF; (ii) the borrower has duly authorized the related primary dealer to act on its behalf in respect of the TALF Master Loan and Security Agreement; (iii) the borrower has rights in the Eligible Collateral free and clear of any adverse claims and sufficient to grant an enforceable security interest to the New York Fed; and (iv) the collateral to be pledged as security for the TALF loan is Eligible Collateral. The representations and warranties of the borrower will be deemed to be continuing so long as the borrower has any obligation outstanding under the TALF loan.
- b. **Covenants.** During the period in which its TALF loan is outstanding, a borrower is required, among other things: (i) to maintain its rights in the Eligible Collateral free of adverse claims and maintain the security interest in the Eligible Collateral granted to the New York Fed; (ii) except in certain limited circumstances, not to pledge, sell or otherwise dispose of the Eligible Collateral; (iii) not to perform any act to impair the New York Fed's rights or interests in the Eligible Collateral; and (iv) to pay all taxes, assessments, governmental charges and levies imposed upon the Eligible Collateral or any income or profits therefrom when due or before they become delinquent. In addition, within five (v) business days after obtaining knowledge that any collateral fails to be Eligible Collateral, the borrower must prepay the TALF loan in the amount of the deficient collateral or deliver substitute assets as collateral that constitute Eligible Collateral.
- c. **Waiver of Immunity.** A borrower will be required to irrevocably waive any immunity, whether characterized as sovereign or otherwise (including, without limitation, immunity from set-off, from service of process, from jurisdiction of any court or tribunal, from attachment in aid of execution, from attachment prior to the entry of judgment or from execution upon judgment), it or its property may have now or have in the future in any legal proceeding in the federal or state courts in the United States.
- d. **Exclusive Jurisdiction of the New York Courts.** A borrower will irrevocably and unconditionally submit itself and its property in any legal action or proceeding relating to the TALF Master Loan and Security Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the United States for the Southern District of New York, and the appellate courts thereof, or in certain cases, the courts of the State of New York located in the Borough of Manhattan in New York City, and the appellate courts thereof.
- e. **Collateral Surrender.** A borrower will have a continuing right, exercisable at any time with respect to any TALF loan it then has outstanding, and whether or not a collateral enforcement event has occurred and is continuing in respect of such TALF loan, to surrender all of the collateral to the New York Fed in full satisfaction of its obligations under such TALF loan, provided that such collateral remains Eligible Collateral under TALF.
- f. **Indemnification.** A borrower must indemnify the New York Fed, the Custodian and the Administrator and their affiliates for any losses incurred by them in the course of or arising out of the performance of the TALF Master Loan and Security Agreement, any action related to the collateral, or any action to which they may become subject in connection with the New York Fed's exercise, enforcement or preservation of any right or remedy granted to the New York Fed under the TALF Master Loan and Security Agreement.

- g. **Limited Recourse.** With respect to any TALF loan, subject to certain exceptions (e.g. indemnification obligations in respect of breaches of representations and warranties), obligations under such loan generally will be payable solely to the extent of funds received (i) by the Custodian in respect of interest payments on and principal payments of the collateral securing such TALF loan and (ii) as a result of the exercise of remedies with respect to the collateral securing such loan.
- h. **Permitted Loan and Collateral Transfer.** A borrower may assign all of its obligations with respect to a TALF loan to another Eligible Borrower so long as permission is obtained from the New York Fed. The New York Fed may delay or withhold its consent to any such assignment for any reason and for any period of time. The New York Fed will not consent to any assignment after December 31, 2009, unless it determines, in its sole discretion, that unusual and exigent circumstances exist in the financial markets.
- i. **Governing Law.** The TALF Master Loan and Security Agreement, including any TALF loan, will be governed by the laws of the State of New York.

TALF Certification. Each issuer and sponsor of ABS or CMBS, as the case may be, constituting Eligible Collateral is required to include certain information in the related offering document. In addition to information required by applicable laws, the issuer and sponsor must ensure that the related offering document includes a signed certification (in the form of the TALF Certification) indicating, among other items, that:

- a. the ABS or CMBS constitute eligible collateral under TALF;
- b. a nationally-recognized independent accounting firm that is registered with the Public Company Accounting Oversight Board will provide a report, in the form of the Auditor Attestation, that the ABS or CMBS constitute eligible collateral under TALF;
- c. the issuer and sponsor acknowledge that purchasers of the ABS or CMBS that are affiliates of either the originator of the collateral securing such ABS or CMBS or the issuer or sponsor of such ABS or CMBS will not be able to use such ABS or CMBS as collateral for a TALF loan;
- d. until such time as the ABS or CMBS matures, the issuer and sponsor will undertake to issue a press release and notify the New York Fed and all registered holders of the related ABS or CMBS if the issuer and sponsor determine that the statements in (a) or (b) above were not correct when made or have ceased to be correct;
- e. the offering document does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading; and
- f. the issuer and the sponsor have executed an undertaking to the New York Fed indemnifying it from any losses it may suffer if such certifications are untrue.

TALF Indemnity. Each sponsor of ABS or CMBS, as the case may be, and, if such sponsor is a special purpose vehicle, its direct or indirect ultimate parent, must execute a TALF Indemnity. Under the TALF Indemnity, the sponsor and parent, if applicable, must indemnify the New York Fed and TALF LLC, and their affiliates, successors and assignees, against any damages arising out of any misrepresentation or breach of warranty or breach of undertaking made by the sponsor in the TALF Certification.

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Auditor Attestation. An accounting firm retained by the sponsor of the ABS or CMBS, as the case may be, must provide an opinion, in the form of the Auditor Attestation, that the sponsor's assertion that the ABS or CMBS is TALF-eligible is fairly stated in all material respects based on the criteria set forth by the Federal Reserve. The accounting firm must be a nationally-recognized independent public accounting firm that is registered with the Public Company Accounting Oversight Board.

Reporting of TALF Activity

The Federal Reserve stated that it will report lending activity under TALF in its H.4.1 weekly statistical release entitled "Factors Affecting Reserve Balances of Depository Institutions and Condition Statement of Federal Reserve Banks." In addition, the Federal Reserve will provide a weekly explanatory note identifying when new TALF activity is being reported in any such release.

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