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Are You Ready to Participate in the TALF?

It's official. The Federal Reserve Board announced Monday, March 3, 2009, that the initial Term Asset-Backed Securities Loan Facility (TALF) subscription date is March 17, 2009, with a corresponding loan settlement date of March 25, 2009. In conjunction with this announcement, the Federal Reserve Board also published revised terms and conditions for participation in the TALF. Together, the revised terms and the short time frame promise a very busy week and a half for investors intending to participate in the TALF this month. Set forth below is a general overview of the TALF as it stands today. Please feel free to contact us for more specific information.

What hasn't changed? First, the criteria for eligible borrowers under the TALF has remained the same, including the restriction that a borrower may not pledge collateral that it or any of its affiliates originated or securitized. Investment fund borrowers may invest exclusively in TALF assets or a mixture of eligible assets. Second, the criteria for eligible collateral, as well as the criteria for the loans underlying such collateral, generally have remained the same. Criteria for (1) ABS backed by rental, commercial and government vehicle fleet leases, (2) ABS backed by small ticket equipment, heavy equipment, and agricultural loans and leases and (3) commercial mortgage-backed securities are being developed. And third,

the TALF process from subscription to settlement has generally remained the same.

The changes? Items of interest to potential investors may include:

- borrowers may request an unlimited number of loans each month
- borrowers may request loans through multiple primary dealers
- pledged asset values equal the lesser of the corresponding par or market value
- loan amounts may equal up to 110 percent of par value for pledged assets with market values above par and, if so, the borrower is required to make periodic prepayments
- haircuts are now based on average life
- reduced initial haircuts for TALF loans benefiting from government guarantees
- reduced interest rate spreads on TALF loans benefiting from government guarantees
- the SEC has granted a limited exemption from the prohibition on arranging certain credit under Section 11(d) (1) of the Securities Exchange Act of 1934

- prohibitions on hedging do not apply to hedges on a borrower's broader portfolio, which may include securities purchased with TALF loans

Items of interest to securitization sponsors may include:

- executive compensation requirements do not apply to any TALF participants, including sponsors
- preliminary (red) prospectus/offering documents may be submitted on subscription dates
- final (black) prospectus/offering documents must be provided no less than four days prior to settlement dates
- clarification that haircuts are based on an ABS's *average* life, which is the expected principal repayment date for credit card and auto dealer floor plan ABS; and, for ABS backed by auto retail loans and leases, student loans and SBA loans, average life is defined as the weighted

average life to maturity based on certain prepayment assumptions and market conventions

- ABS average life data must be published in offering documents
- auto loan and auto lease ABS are considered prime if the weighted average FICO score is 680 or greater
- credit card ABS are considered prime if at least 70 percent of the receivables have a FICO score greater than 660
- variable funding note amounts are calculated based on commitment termination dates and maximum contractual principal balances

Finally, promulgated forms of transaction documents for the TALF are available at http://www.newyorkfed.org/markets/talf_docs.html, including:

- TALF Master Loan and Security Agreement (revised), to be signed by the Primary Dealers

- Customer Agreement, between Primary Dealers and Borrowers
- Form of Certification as to TALF Eligibility, to be signed by Sponsors and Issuers and included in the prospectus/offering documents
- Form of Indemnity Undertaking, to be signed by sponsors and issuers
- Form of TALF Auditor Attestation

Now that the first subscription date has been set, interested sponsors and investors should carefully review with legal counsel the revised terms and conditions as well as the forms of agreement to determine the implications of participating in the TALF. Review topics should include, among other issues, (1) limitations on the non-recourse nature of the loans, (2) required representations and warranties and (3) other risks associated with working with the government under the TALF. If you need assistance, please feel free to contact us.