

April 2009 / Special Alert (updated)

A legal update from Dechert's Finance and Real Estate and Financial Services Groups

Term Asset-Backed Securities Loan Facility (TALF)

The Federal Reserve Bank of New York (the "FRBNY") established the Term Asset-Backed Securities Loan Facility (the "TALF") to stimulate the securitization markets by providing financing to third party investors investing in highly rated asset-backed securities ("ABS") issued on or after January 1, 2009.¹ Under the first phase of the TALF, launched on March 3, 2009, the FRBNY will make available to eligible borrowers up to \$200 billion of TALF loans to finance the purchase of eligible ABS backed by student loans, automobile loans, credit card receivables, Small Business Administration ("SBA") loans and, as of the April TALF loan funding, ABS backed by mortgage servicing advances, business equipment loans and leases, vehicle fleet leases and non-automobile floorplan loans. The FRBNY is in the process of expanding the TALF to provide up to \$1 trillion of TALF loans. Although details are not yet available, the FRBNY has announced that it will include in the expanded program legacy commercial mortgage-backed securities ("CMBS") and legacy residential mortgage-backed securities ("RMBS") as part of the Treasury's public private investment legacy securities program and it is considering permitting new issuance CMBS, non-agency RMBS, collateralized loan obligations and collateralized debt obligations as eligible collateral. Since the launch date of the TALF program, the FRBNY has released revised TALF terms and conditions, frequently asked questions and TALF documents on its website.

¹ Or on or after January 1, 2008 with respect to SBA Pool Certificates and SBA Development Company Participation Certificates.

Terms and Conditions of the TALF

General

The first TALF loan closing date occurred on March 25, 2009. Subscriptions for TALF loans and loan closings will happen on a monthly basis thereafter with loan subscriptions occurring on the first Tuesday of each month and the loan closing occurring the Tuesday following the subscription date until the expiration of the TALF lending program on December 31, 2009, unless the program is extended by the Federal Reserve Board.

TALF Loan Terms

TALF loans must be made to eligible borrowers through primary dealers and must be secured by eligible collateral. See the discussion below regarding eligible borrowers and eligible ABS collateral.

TALF loans do not provide for mark-to-market or remarking requirements. Therefore, eligible borrowers will not be subject to margin calls due to declines in the value of pledged ABS. In addition, any ratings downgrade of eligible ABS collateral after the TALF loan origination will have no effect on the terms of the TALF loan. Furthermore, neither the sponsor,² issuer, or underwriter of eligible ABS collateral nor the TALF borrower is required to comply with the TARP executive compensation restrictions in order to participate in the TALF program.

² As defined in 17 C.F.R. § 229.1101 (Regulation AB), "sponsor" means the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

The minimum TALF loan amount is \$10 million. There is no maximum TALF loan amount.

On any monthly subscription date, an eligible borrower may request through one or more primary dealers one or more floating-rate TALF loans secured by floating-rate eligible collateral and one or more fixed-rate TALF loans secured by fixed-rate eligible collateral.

Based on the current TALF standing loan facility procedures published on the TALF website³, which may be modified by the FRBNY in the future, interest rates on TALF loans will be set two business days prior to each TALF loan closing date. The interest rate on TALF loans secured by ABS backed by Federally guaranteed student loans will be 50 basis points over 1-month LIBOR. The interest rate on TALF loans secured by SBA Pool Certificates will be the Federal funds target rate plus 75 basis points. The interest rate on TALF loans secured by SBA Development Company Participation Certificates will be 50 basis points over the 3-year LIBOR swap rate. For TALF loans secured by other eligible fixed-rate ABS, the interest rate will be 100 basis points over the 3-year LIBOR swap rate. For TALF loans secured by other eligible floating-rate ABS, the interest rate will be 100 basis points over 1-month LIBOR. The interest rate on a TALF loan is increased by 2% at such time, if any, as the TALF loan becomes a recourse loan.

For eligible collateral priced at a premium to par, the borrower will use interest receipts as part of its monthly loan interest expense amount to make an additional payment of a required monthly amortization amount calculated to adjust for the expected reversion of market value toward par value as the ABS matures. Payments of such required monthly amortization amount will be applied to reduce the outstanding principal amount of the related TALF loan.

³ The terms, conditions, and procedures with respect to the TALF program will be published from time to time on the TALF website found at www.ny.frb.org/markets/talf.html, and will include information related to the following topics: Eligibility Criteria, Classes of Collateral, Haircut Percentages, interest rates applicable to Loans, Loan Subscription Dates, and scheduled Loan Closing Dates.

For eligible ABS collateral with a market value⁴ at or below par, the FRBNY will lend an amount equal to the lesser of par or market value of such collateral less a haircut amount. For eligible ABS collateral with a market value above par, the FRBNY will lend an amount equal to its market value (capped at 110% of par) less a haircut amount. The haircut amount represents the equity required to be paid by the borrower to acquire an eligible ABS collateral financed by the TALF. Collateral haircuts vary based on the type and quality of the assets backing the eligible ABS collateral and the average life of the eligible ABS collateral as shown in a “haircuts” matrix found on the TALF website, which may be modified by the FRBNY. For ABS benefiting from a U.S. government guarantee⁵ with average lives beyond five years, haircuts will increase by one percentage point for every two additional years of average life beyond five years. For all other ABS with average lives beyond five years, haircuts will increase by one percentage point for each additional year of average life beyond five years.

At closing, the borrower (i) through its primary dealer must deposit into the master TALF collateral account maintained by the TALF custodian the sum of (a) the haircut amount with respect to the related eligible collateral, (b) any other closing amounts (accrued interest owed to the seller of the ABS, if any, and the excess, if any, of the purchase price over the market value of the ABS), and (c) an administrative fee of five basis points of the loan amount, and (ii) through its primary dealer or another delivery counterparty must deliver the eligible pledged collateral to the TALF

⁴ Market value means the outstanding principal amount of any item of eligible collateral multiplied by the market price thereof. Market price is determined by the TALF custodian three business days prior to the loan closing date, and (x) in the case of eligible collateral being newly acquired by the borrower is the price set forth in the sale confirmation reported to the TALF custodian by the primary dealer, or (y) in the case of eligible collateral already owned by the borrower is based on (i) pricing information reported by pricing services, or (ii) if such information is not available or the custodian deems it not to be reliable, is the average of price quotations from at least three broker dealers, or (iii) if pricing is not available under either clause (i) or clause (ii) or the custodian believes that the price so determined may not accurately reflect market price, is determined in good faith by the custodian in consultation with the FRBNY. Market price may not exceed par unless a required monthly amortization amount is applicable to the related item of collateral provided that in no event shall the market price of an item of collateral exceed 110%.

⁵ Currently, such ABS include: FFELP ABS, SBA 7(a) ABS and SBA 504 ABS.

custodian through The Depository Trust Company (“DTC”). To the extent the borrower fails to deliver collateral, the loan amount will be appropriately reduced.

TALF loans will mature in three years or on such earlier date as all of the eligible collateral securing the related TALF loan matures. We note that to the extent the borrower secures a TALF loan with eligible collateral that matures after three years, the borrower takes refinancing risk. The market currently expects the FRBNY to extend the maturity of TALF loans secured by RMBS or CMBS to five years.

TALF loans are prepayable in whole or in part at any time without penalty. If a borrower makes a partial prepayment, eligible collateral securing the related loan will be released on a *pro rata* basis. We note that this beneficial feature permits a borrower to refinance TALF loans at such time as the market improves and the borrower can refinance on better terms.

All interest receipts and principal receipts with respect to the eligible ABS collateral will be deposited directly into the master TALF collateral account.

Interest on TALF loans is payable monthly. Interest received with respect to eligible collateral will be applied first to pay the monthly interest due on the TALF loan (including any required monthly amortization amount with respect to an above par loan, but only after the balance of the monthly loan interest expense amount has been paid in full) with any excess to be transferred to the account of the primary dealer for the borrower. If there are insufficient interest collections to cover the monthly interest due *and* a monthly interest deficiency amount exists,⁶ an interest deficiency notice will be sent by the TALF administrator to the primary dealer for the borrower demanding that the monthly interest deficiency amount be paid and the primary dealer is required to immediately forward such notice to the related borrower. Failure by the borrower to pay such monthly interest deficiency amount within 30 days after

⁶ The monthly interest deficiency amount with respect to a TALF loan is the sum of (i) the excess of (x) the amount of interest expected to be received on the eligible collateral based on its terms as of the date of its pledge over (y) the amount of interest actually received on the eligible collateral for the related period plus (ii) the cumulative amount of all such monthly interest deficiency amounts accrued in prior months not covered by reductions of principal receipts otherwise payable to the borrower.

receipt of such notice constitutes a collateral enforcement event under the Master Loan and Security Agreement (“MLSA”) permitting the FRBNY to exercise its remedies thereunder.

Principal received with respect to eligible collateral will be applied *pro rata* based on the TALF loan/haircut ratio at origination (i) to reduce the outstanding principal amount of the TALF loan, and (ii) to pay the borrower through the primary dealer, provided that the amount so payable with respect to the borrower will first be reduced by the then outstanding monthly interest deficiency amount, if any. We note that this beneficial feature permits the borrower to maintain the same leverage ratio on its eligible collateral over the life of the TALF loan. Interest receipts applied to the payment of the required monthly amortization amount with respect to any above par collateral will reduce the outstanding principal amount of the related TALF loan.

All funds paid and collateral released to the borrower are transferred by the TALF custodian to the primary dealer, and neither the TALF custodian nor the FRBNY has any obligation to account therefor once so transferred. The borrower may be at risk should its primary dealer declare bankruptcy prior to transferring such funds and collateral to the borrower.

TALF loans are recourse only to the eligible collateral securing the related loan, except the loan may become recourse as specified in Section 17.0 of the MLSA published on the TALF website if (i) the borrower is or becomes not an eligible borrower based on the criteria for eligible borrowers in effect at the time the related loan was originated, (ii) certain of the borrower’s representations are inaccurate,⁷ (iii) a payment is erroneously made by the issuer of the eligible collateral and is later reversed giving the FRBNY a right of reimbursement therefor against the borrower, or (iv) if, on or prior to the maturity date of the loan, the borrower

⁷ See Sections 10.1(c) and (e) of the MLSA, which include representations and warranties with respect to enforceability of the lending agreement against the borrower, and representations and warranties pertaining, among other things, to the eligibility of the borrower and the collateral relating to the validity and enforceability of the MLSA, to the borrower: being an eligible borrower, having authorized a primary dealer to execute the MLSA on its behalf, having rights in the collateral free and clear of any adverse claims and granting to the FRBNY a security interest in such collateral, and the collateral being eligible collateral to such borrower’s knowledge based on its review of the applicable offering materials.

has not delivered to the TALF custodian a Collateral Surrender and Acceptance Notice electing to surrender the collateral in full satisfaction of its obligations with respect to the TALF.⁸ We assume that clause (iv) will not apply if the borrower pays its obligations under its TALF loan in full on or prior to the maturity date of the loan. The borrower's recourse liability under a TALF loan survives the termination or expiration of the MLSA and the payment in full of all of such borrower's obligations relating to the TALF loan.

Pledged collateral may not be sold or otherwise pledged or transferred by the borrower so long as any of its TALF obligations remain outstanding, except in connection with a sale of the collateral against payment in full of the related TALF loan, the surrender of collateral at the option of the borrower in full satisfaction of its TALF obligations or in connection with a transfer of the loan and related collateral by the borrower that is consented to by the FRBNY prior to December 31, 2009 (unless such date is extended by the FRBNY). We note that Section 11.2(b) of the MLSA does not expressly permit the sale of collateral in connection with any partial prepayment of the loan, although Section 8.2 of the MLSA permits release of collateral *pro rata* with the reduction of the loan amount.

TALF loans are assignable by the FRBNY. TALF loans are assignable by an eligible borrower selling the related collateral to another eligible borrower with the consent of the FRBNY prior to December 31, 2009 (unless such date is extended by the FRBNY). We note that there is no restriction on sale of ownership interests in the borrower under the MLSA (to the extent the sale of ownership interests does not cause a borrower to become ineligible).

In lieu of repaying outstanding principal or interest on a TALF loan, a borrower may surrender the collateral to the FRBNY by delivering a Collateral Surrender and Acceptance Notice with respect to the TALF loan. If by the maturity date a borrower fails to deliver the Collateral Surrender and Acceptance Notice, or, we assume, fails to pay its obligations under the TALF loan in full, the FRBNY may exercise recourse rights against the borrower and require the borrower to repay the TALF loan.

⁸ In lieu of repaying outstanding principal or interest on a TALF loan, a borrower may surrender the collateral to the FRBNY by delivering a Collateral Surrender and Acceptance Notice with respect to the TALF loan.

Collateral enforcement events that permit the FRBNY to exercise its remedies under the MLSA include the following, in each case without notice or grace period except as noted:

- Any obligation is not paid when due, provided that failure to pay monthly interest payments is not a collateral enforcement event, unless such failure to pay is not cured by payment by the borrower of the monthly interest deficiency amount within 30 days after receipt of an interest deficiency notice with respect thereto;
- Any covenant default by the borrower under any of its obligations under the lending agreement, such failure continuing for a period of five business days;⁹
- Breach of any representation or warranty made by the borrower;
- Borrower insolvency;
- The lending agreement or security interest in the pledged collateral ceases to be in full force and effect or such security interest fails to have the priority purported to be created thereby;
- Any encumbrance on collateral securing any of the borrower's loans arises other than that created by the MLSA, such encumbrance remaining undischarged for a period of five business days; and
- Any event of default arises under any agreement relating to pledged collateral due to the insolvency of the issuer thereof.

Upon the occurrence of a collateral enforcement event, the FRBNY may declare the related loan due and payable and exercise remedies including, among other things, a put of the collateral to TALF LLC as described below. TALF loans are not cross-collateralized or cross-defaulted except in the event of a borrower insolvency.

⁹ The lending agreement includes the MLSA (which incorporates by reference certain terms published on the TALF website), each final confirmation, each letter of agreement executed and delivered by any primary dealer and any other agreement or document executed or on behalf of any borrower (other than the borrower's customer agreement with its primary dealer) in connection with the MLSA.

Eligible Borrowers

Eligible borrowers include any U.S. company that is:

- a business entity or institution organized under the laws of the U.S., or a political subdivision or territory thereof (“U.S.-organized”), that conducts significant operations or activities in the U.S. and any U.S.-organized subsidiary of such entity;
- a U.S. branch or agency of a foreign bank (other than a foreign central bank) that maintains reserves with a Federal Reserve Bank;
- a U.S. insured depository institution; or
- a U.S.-organized investment fund¹⁰ managed by an investment manager that has its principal place of business in the U.S.

An entity that satisfies any one of the requirements above is deemed a U.S. company regardless of whether it is controlled by, or managed by, a company that is not U.S.-organized. Notwithstanding the foregoing, a U.S. company excludes any entity, other than those described in clauses (2) and (3) above, that is controlled by a foreign government or is managed by an investment manager, other than those described in clauses (2) and (3) above, that is controlled by a foreign government. For purposes of the eligible borrower definition, a foreign government controls a company if, among other things, it owns, controls or holds with the power to vote 25% or more of a class of voting securities of the company.

Eligible borrowers must borrow through one or more primary dealers.¹¹ An eligible borrower must have

¹⁰ For TALF purposes, an “investment fund” is any type of pooled investment vehicle, including a hedge fund, a private equity fund, and a mutual fund or a vehicle that primarily or exclusively invests in eligible collateral and borrows from the TALF. Mutual funds that desire to participate as eligible borrowers in TALF must also comply with restrictions under the Investment Company Act of 1940 (“1940 Act”) and the rules and regulations thereunder. Most significantly, Section 18 of the 1940 Act imposes limitations on borrowings by investment companies. While the non-recourse nature of the TALF loans may support an argument that any such loan should be excluded from the restrictions under Section 18, in the absence of no-action relief or interpretive guidance from the Securities and Exchange Commission, mutual fund participation in TALF may be limited.

executed a customer agreement authorizing a primary dealer to execute the MLSA as agent for the borrower. The primary dealer will submit to the TALF custodian on the loan subscription date a loan request in the form attached to the MLSA indicating, among other things, the amount of each loan requested by the borrower, the interest rate type corresponding to the type of collateral pledged (fixed-rate or floating-rate) and the CUSIPs of the ABS expected to be pledged as collateral and will deliver the offering documents relating thereto. The custodian will send to the primary dealer at least two business days prior to the TALF loan closing date a confirmation specifying the borrower’s loan amount, fixed-rate, LIBOR margin or Fed Funds margin, and the amount and description of the ABS that will be accepted as eligible collateral for the loan on the closing date. Such confirmation will also include the administrative fee and amount of the haircut to be collected by the primary dealer from the borrower and paid on the loan settlement date.

Eligible ABS Collateral

Eligible ABS collateral must be issued on or after January 1, 2009, except that SBA Pool Certificates and SBA Development Company Participation Certificates must be issued on or after January 1, 2008.

Eligible ABS collateral includes U.S. dollar-denominated non-synthetic cash ABS and must be cleared through DTC.

Eligible ABS collateral must have a credit rating in the highest long-term or short-term investment-grade rating category from two or more major nationally recognized statistical rating organizations (“NRSROs”) and must not have a credit rating below the highest investment-grade rating category from a major NRSRO.¹² Collateral will not be eligible if such credit ratings are based on a third-party guarantor, or if the ABS has been placed on review or watch for downgrade by a major NRSRO. If ABS that was once deemed eligible collateral is subsequently placed on review or watch for downgrade by a major NRSRO, such ABS may not be used as collateral

¹¹ A primary dealer is any financial institution appearing on the FRBNY list of “Primary Government Securities Dealers Reporting to the Government Securities Dealers Statistics Unit of the Federal Reserve Bank of New York” that enters into the MLSA.

¹² The major NRSROs for purposes of determining TALF-eligible ABS are Fitch, Moody’s, and S&P.

for any new TALF loan until its ratings have been affirmed by a major NRSRO such that it again becomes eligible collateral. We note that rating downgrades do not cause a collateral enforcement event to occur under the MLSA.

95% or more of the dollar amount of the credit exposures underlying eligible ABS collateral must be exposures to U.S.-domiciled obligors.

Eligible ABS collateral for a particular borrower must not be backed by loans originated or securitized by the borrower or by an affiliate of the borrower.¹³

Each item of eligible ABS collateral must have a market value measured by the TALF custodian as of the third business day prior to the TALF loan closing date of at least \$10 million (or, in the case of an SBA Pool Certificate, at least \$1 million).

Borrowers with eligible ABS collateral of all asset types will receive loans from the same facility.

No collateral substitution will be permitted.

Offering document disclosure with respect to eligible ABS collateral must include a certification signed by the sponsor and the issuer as to its TALF eligibility in the form available on the FRBNY website and must (i) state that the ABS is TALF eligible, (ii) acknowledge that the sponsor and issuer consent to the independent accounting firm that is performing certain procedures for the benefit of the FRBNY in connection with the offering being required, in certain circumstances where fraud or illegal acts are suspected to have occurred, to make reports to the TALF compliance fraud hotline, (iii) acknowledge that the sponsor and issuer understand that purchasers of the ABS securities offered thereunder that are affiliates of either the originators of assets that are securitized in the ABS offering or the issuer or sponsor of the offering will not be able to use such securities as TALF collateral, (iv) include a representation that the information provided in the offering document, together with information provided to the NRSROs in connection with the offering, does not

¹³ An affiliate of the borrower includes any company that controls, is controlled by, or is under common control with the borrower. For such purposes, a person or company controls a company if, among other things, it owns, controls or holds with the power to vote 25% or more of a class of voting securities of the company or consolidates the company for financial reporting purposes.

contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading, (v) state that the sponsor (or its direct or indirect ultimate parent) has executed an indemnity undertaking in the applicable form proscribed by the FRBNY indemnifying the FRBNY, TALF LLC, any of their affiliates, and any of their successors and assigns for any losses they may suffer if such certifications are untrue, such indemnity undertaking to be delivered to the FRBNY and (vi) permit the United States Department of the Treasury, the Special Inspector General of the Troubled Assets Relief Program (“TARP”), and the Comptroller General of the United States access to personnel and any books, papers, records or other data in possession, custody or control to the extent relevant to ascertaining the cause and nature of a breach of the representation and warranty that the ABS is TALF eligible. SBA Pool Certificates and Development Company Participation Certificates are not required to provide an issuer certification or indemnity. However, pool assemblers must deliver to the FRBNY an undertaking in connection with SBA Pool Certificates in the applicable form proscribed by the FRBNY. Development Company Participation Certificates do not have to be accompanied by any undertaking.

The following is a summary of current restrictions relevant to particular asset classes covered by the first phase of the TALF.

Automobile Loans

Automobile-related receivables include retail loans and leases relating to cars, light trucks, motorcycles and other recreational vehicles (“RVs”), as well as commercial, government and rental fleet leases related to any type of vehicle that have collateralized ABS transactions in the past.

85% or more of the dollar amount of the credit exposures underlying eligible automobile loan ABS issued by a non-revolving trust must have been originated on or after October 1, 2007.

Eligible automobile ABS issued by a revolving (or master) trust must be issued to refinance existing automobile ABS maturing in 2009 and must be issued in amounts no greater than the amount of the maturing ABS.

Eligible automobile ABS may also be issued out of an existing or newly established master trust in which all or

substantially all of the underlying exposures were originated on or after January 1, 2009.

Eligible automobile ABS must have an average life of no more than five years.

Student Loans

Student loans will include federally guaranteed student loans (including consolidation loans) and private student loans.

85% or more of the dollar amount of the credit exposures underlying eligible student loan ABS must have had a first disbursement date on or after May 1, 2007.

Credit Card Receivables

Credit card receivables will include both consumer and corporate credit card receivables.

Eligible credit card ABS issued by a revolving (or master) trust must be issued to refinance existing credit card ABS maturing in 2009 and must be issued in amounts no greater than the amount of the maturing ABS.

Eligible credit card ABS must have an average life of no more than five years.

Equipment Loans

Eligible equipment-related receivables will include loans and leases relating to business, industrial and farm equipment. Such equipment includes, but is not limited to, agricultural, construction, or manufacturing equipment; trucks other than light trucks; smaller ticket items such as communications, office, and medical equipment, computers, copiers, and security systems, and other types of equipment that have been securitized in the past.

The credit exposures underlying eligible equipment ABS may include a mixture of loans and leases on a mixture of types of equipment.

85% or more of the dollar amount of the credit exposures underlying eligible equipment loan ABS must have been originated on or after October 1, 2007.

Eligible equipment loan ABS must have an average life of no more than five years.¹⁴

Floorplan Loans

Eligible floorplan receivables will include revolving lines of credit used to finance dealers' inventories of items including, but not limited to, vehicles such as cars, trucks, RVs, trailers, boats and sports vehicles; agricultural, construction or manufacturing equipment; manufactured housing; large appliances; and electronic equipment.

Such revolving lines of credit may be collateralized by a mixed type of inventory, including any type of inventory that has collateralized securitized floorplan loans in the past.

Automobile floorplan receivables will include revolving lines of credit to finance dealer inventories of cars and light trucks.

Eligible floorplan ABS issued by a revolving (or master) trust must be issued to refinance existing floorplan ABS maturing in 2009 and must be issued in amounts no greater than the amount of the maturing ABS.

Eligible floorplan ABS may also be issued out of an existing or newly established master trust in which 85% or more of the dollar amount of the underlying exposures were originated on or after January 1, 2009.

Eligible floorplan ABS must have an average life of no more than five years.

Small Business Loans

Small business loans include loans, debentures or 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.

¹⁴ For credit card, automobile lease and equipment lease securitizations, the underlying exposures may include financial assets that represent an interest in or the right to payments or cash flows from another asset pool (intermediate securities) created in the normal course of business solely to facilitate the issuance of an ABS. In such cases, for purposes of determining whether the exposures underlying an ABS meet the eligibility requirements for TALF collateral, the credit exposures underlying the intermediate securities are considered to be the underlying exposures of the ABS itself.

SBA Pool Certificates and 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 small business ABS must have been originated on or after January 1, 2008.

Mortgage Servicing Advances

Eligible servicing advance receivables will include receivables created by principal and interest, tax and insurance, and corporate advances made by Fannie Mae- or Freddie Mac-approved residential mortgage servicers under pooling and servicing agreements. Eligible servicing advance receivables must be related to residential mortgage loan securitizations that grant the servicer a first priority in any insurance or liquidation proceeds from a loan, and, if those proceeds are insufficient, grants the servicer a first priority to general collections of the related securitization. The related servicing agreement to every trust must give the servicer the right to assign, transfer or pledge its rights to be reimbursed and must provide that all advances are reimbursed on a "first-in first-out" basis.

All or substantially all eligible servicing advances must have been originated on or after January 1, 2007.

Eligible servicing advance receivable ABS must have an average life of no more than five years.

All or substantially all of the servicing advances creating the receivables must be related to a U.S.-domiciled residential property.

TALF LLC and the Put Option Agreement

If a collateral enforcement event occurs, the FRBNY may exercise its rights under a put option agreement pursuant to which TALF LLC, a special purpose vehicle capitalized by a subordinated loan by the U.S. Treasury's TARP, has agreed to purchase the collateral put to it securing the related TALF loan at a price equal to the unpaid TALF loan amount plus accrued but unpaid interest thereon. During the first phase of the TALF, the U.S. Treasury has agreed to provide up to \$20 billion of TARP funds to purchase subordinated debt issued by TALF LLC to finance the first \$20 billion of such collateral purchases. The aggregate amount of TARP funds available to purchase subordinated debt of TALF LLC is expected to be increased to up to \$100 billion

during the next phase of TALF. If collateral in excess of the amount of such subordinated debt must be purchased by TALF LLC, the FRBNY will lend additional funds to TALF LLC to finance such additional purchases. Any such FRBNY loan to TALF LLC will be secured by all assets of TALF LLC, and will be senior to any TARP subordinated debt.

Foreign Workers

Companies receiving funds from the U.S. government can be limited in hiring workers employed in the U.S. under H-1B visas. The recently enacted American Recovery and Reinvestment Act of 2009 requires employers who accept TARP funds to make additional attestations on the labor condition application when seeking to hire new H-1B employees. The Employ American Workers Act ("EAWA") provision related to hiring new employees who are in H-1B nonimmigrant status applies to all borrowers under the TALF. In addition, if the eligible borrower is an investment fund, the EAWA also applies to any entity that owns or controls 25% or more of the total equity of the investment fund.

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