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Term Asset-Backed Securities Loan Facility

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Simpson Thacher & Bartlett LLP

Term Asset-Backed Securities Loan Facility
Summary Overview Of 2009-2010 Operating Procedures

Under the Term Asset-Backed Securities Loan Facility ("TALF"), as implemented in 2009-2010, the Federal Reserve Bank of New York ("FRBNY") extended to eligible borrowers loans with a term of three years (or five years in certain cases), that were secured by certain highly-rated asset-backed securities ("ABS"). Eligible collateral generally included various types of consumer and small-business securitized receivables as well as certain securitized commercial real estate loans. Generally, the borrower could not pledge more than one security as collateral for a single loan.

Any loans secured by collateral with a maturity of less than the loan's maturity were due upon the maturity of the ABS collateral securing that loan. Borrowers were required to request a minimum of $10 million for each loan, and there was no maximum loan amount (subject to collateral valuation rules and applicable haircuts). In particular, borrowers were permitted to borrow an amount up to the value of their pledged collateral minus a haircut (generally between 5% and 16%, which varied depending on the type and average life of the security pledged).

TALF loans were non-recourse, except in certain cases of breach of agreement. Accordingly, investors could generally surrender the collateral to the FRBNY instead of repaying the loan. The capital structure of the TALF SPV, in which Treasury purchased $4.3 billion of subordinated debt, effectively resulted in a loss sharing arrangement between Treasury and the FRBNY.

Borrowers with eligible ABS collateral of all asset types received loans from the same TALF facility, but loans secured by commercial mortgage-backed pass-through securities ("CMBS") and non-CMBS loans had separate subscription and settlement date cycles (with the subscription and settlement cycle occurring in the first half of each month for non-CMBS TALF loans, and in the latter part of each month for CMBS TALF loans). Before the subscription date, the borrower was required to submit a loan package to a TALF Agent (one of the primary dealers or other participating broker-dealers) containing details of the loan request, including the loan amount requested, applicable interest rate type (i.e., fixed or floating) and information regarding the collateral (including offering materials, eligibility information, valuation and haircut amount). The TALF Agent would then submit a loan package to the FRBNY and the Bank of New York Mellon ("BNYM"), as administrator and custodian for the FRBNY, on the subscription date.

After BNYM reviewed the loan packages, it would notify each TALF Agent of the loan amount approved by the FRBNY, the collateral to be delivered, the administrative fee and the haircut amount. On the loan settlement date, the TALF Agent would deliver such funds and securities to BNYM, who in turn would credit the TALF Agent's account with the loan amount. The TALF Agent then disbursed the loan amount to the individual borrowers.

Under most circumstances, the FRBNY would fulfill the loan request of every eligible borrower who posted eligible collateral. However, the FRBNY could refuse a borrower's funding request if it believed that a borrower's or any of its affiliates' direct or indirect economic interest in the loans or leases underlying the ABS impaired the incentive of the borrower to independently assess the risk of investment in the pledged ABS. To enhance certainty of TALF financing with respect to the question of borrower eligibility, the FRBNY developed procedures for pre-certification of certain classes of borrowers.

Additional detail regarding the TALF program as operated in 2009-2010 is provided in the accompanying term sheet summarizing certain relevant provisions of the Master Loan and Security Agreement and related documents.

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Term Asset-Backed Securities Loan Facility
Master Loan and Security Agreement
as of January 15, 2010

This Summary of Terms and Conditions is an outline only and does not purport to summarize all of the conditions, terms, covenants, representations, warranties and other provisions contained in definitive legal documentation (including the Master Loan and Security Agreement, or "MLSA") for the Term Asset-Backed Securities Loan Facility ("TALF") operated by the Federal Reserve. This Summary of Terms and Conditions is based on the program documentation for the 2009-2010 TALF program in its most recent form.

Purpose:

To make loans available to eligible borrowers to enable them to purchase highly rated asset-backed securities (ABS) backed by newly and recently originated auto loans and leases; credit card receivables; student loans; SBA guaranteed small business loans; equipment loans and leases; commercial and government fleet leases; commercial loans secured by vehicles and the related fleet leases and subleases of those vehicles to rental car companies; floorplan loans; residential mortgage loan servicing advances; property and casualty insurance premium finance loans; and commercial mortgage loans.

Lender:

The Federal Reserve Bank of New York.

Administrator:

The Bank of New York Mellon.

Custodian:

The Bank of New York Mellon.

Eligible Borrowers:

Any U.S. company that owns eligible collateral would be eligible to borrow from the TALF provided the company maintains an account relationship with a TALF Agent. An entity was a U.S. company if it was:

- 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, including any U.S.-organized subsidiary of such an 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
- 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.

An entity that satisfies any one of the requirements above was considered a U.S. company regardless of whether it was controlled by, or managed by, a company that is not U.S.-organized.

Ineligible Borrowers

Notwithstanding the foregoing, a U.S. company excluded any entity that was controlled by a foreign government or was managed by an investment manager that is controlled by a foreign government.

TALF Agents

Primary dealers, as well as other dealers who have been specially designated by the FRBNY for this role in support of TALF, serving as agents on behalf of their customers.

TALF Agents' roles included to:

- Collect from its customers the amount of each borrower's loan requests, the CUSIPs of the ABS the borrower expects to deliver and pledge against the loan and the prospectuses and/or offering documents of the newly issued ABS expected to be pledged;
- Submit aggregate loan request amounts on behalf of its customers in the form and manner specified by the FRBNY;
- On the subscription date, submit a file to the custodian containing a detailed breakdown of the loan requests, which would, among other things, include the identity of the individual borrowers, the amount of each borrower's loan request and the material information collected above;
- Collect from its customers and deliver to the custodian the administrative fee and any applicable margin required to be delivered to the custodian on the loan settlement date;
- On the loan settlement date, deliver the ABS collateral to the Custodian through DTC before the DTC settlement cutoff time, and collect and disburse the loan principal amount from the FRBNY's master settlement account;
- Periodically receive from the custodian the portion of the distributions on the collateral that are to be paid to its customers and disburse such payments in accordance with the instruction of its customers and provide any applicable tax report to its customers.

Facility Amount:

A borrower would be required to request a minimum of $10 million for each loan. There would be no maximum TALF loan amount (subject to collateral valuation and applicable haircuts).

Maximum Loan Amount:

- For legacy CMBS collateral, the FRBNY would lend to each borrower an amount equal to the lesser of the par or market value of the pledged collateral, or a value based on the FRBNY's risk assessment, less the base dollar haircut.

- For non-mortgage-backed ABS and newly issued CMBS with a market value of par or less, the FRBNY would lend to each borrower an amount equal to the market value of the pledged collateral, minus a haircut.

- For non-mortgage-backed ABS and newly issued CMBS with a market value above par, the FRBNY would lend an amount equal to the market value, subject to a cap of 110% of par value, minus a haircut, and the borrower would periodically prepay a portion of the loan.

- For ABS with a redemption option exercisable below par, the market value of such ABS would be capped at 105% of par value.

Haircuts:

- FRBNY would publish a table of collateral haircuts based on asset classes and the expected lives of the ABS, generally between 5% and 16% and covering asset classes with expected lives up to seven years, and designed to be risk sensitive across asset class and maturity.

- Haircuts were based in part on the expected life of the collateral because typically the longer the average life of the asset, the greater the credit risk.

- Generally, for ABS with average lives of five or more years, haircuts increased by 1% for each additional year of average life at or beyond five years; but for those with a government guarantee (such as SBA and certain student loans), haircuts increased by 1% for every two years.

Facility Increases:

A borrower would not be permitted to adjust its loan request to obtain a larger amount of TALF loans than originally requested. There was no limit on a borrower submitting a subsequent request for additional TALF loans.

The borrower's original loan request, submitted via its TALF Agent on the subscription date, would be permitted to later be adjusted only if the borrower was allocated less than the expected amount of a newly issued ABS.

Term:

Each TALF loan would have a three-year maturity, except that TALF loans secured by SBA Pool Certificates, SBA Development Company Participation Certificates, or ABS backed by student loans or commercial mortgages would have a five-year maturity if the borrower so elects.

Fees:

On each loan's settlement date, the borrower would be required to pay to the FRBNY's settlement account an administrative fee equal to 10 basis points of the loan amount for non-mortgaged-backed ABS collateral, and 20 basis points for CMBS collateral.

Interest Rates:

Borrowers would be able to choose either a fixed or a floating rate on each TALF loan, set on the subscription date. The loan rate would be determined by the type of collateral securing the loan.

No Government Guarantee

In general, for TALF loans backed by collateral not benefitting from a government guarantee:

- For floating-rate loans, the interest rate would be 100 basis points over 1-month LIBOR;
- For fixed-rate 3-year loans, the interest rate would be 100 basis points over:
  a. the 1-year LIBOR swap rate for securities with a weighted average life less than one year,
  b. the 2-year LIBOR swap rate for securities with a weighted average life greater than or equal to one year and less than two years, or
  c. the 3-year LIBOR swap rate for securities with a weighted average life of two years or greater.[1]
- For fixed-rate 5-year loans, the interest rate would be 100 basis points over the five-year LIBOR swap rate.
- For TALF loans secured by private student loan ABS bearing a prime-based coupon, the interest rate would be the higher of 1% and the prime rate minus 175 basis points.

With Government Guarantee

- The interest rate spread on TALF loans backed by collateral benefitting from a government guarantee – that is, FFELP ABS, SBA 7(a) ABS, and SBA 504 ABS – would be 50 basis points over the federal funds target rate (or the top of the federal funds target range) plus 25 basis

[1] For TALF loans backed by CMBS (both legacy and newly issued), fixed rate three-year loans would only be granted with an interest rate of 100 basis points over the 3-year LIBOR swap rate.

points for SBA 7(a) ABS, over one-month LIBOR for FFELP ABS and over the three-year LIBOR swap rate for SBA 504 ABS.

Changes to Interest Rates

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

Interest Payments:

Interest payments were due monthly, and were payable to BNYM as custodian. On each payment date, all ABS interest payments and other distributions (excluding principal payments) received by the Custodian on or before the business day immediately preceding the payment date would be applied on the payment date as follows:

- *first*, to the payment of the monthly interest on the related loan (computed on the basis of a 365 day year and actual days elapsed);
- *second*, to the payment of principal on the TALF loan until the principal balance of the loan has been repaid in full; and
- *third*, to the extent of any excess (except in certain limited circumstances), to the borrower's TALF Agent for disbursement to the borrower.

To the extent the interest rate charged by the Federal Reserve Bank of New York was lower than interest earned on the collateral, the borrower would generally not need to make a monthly payment, but instead would receive a net interest payment, subject to certain limits on the distribution of net carry that are determined according to a formula set by the Federal Reserve Bank of New York based on the term of the loan.

Principal Payments:

On each payment date, all ABS principal payments received by the Custodian on or before the business day immediately preceding the payment date would be applied on the payment date as follows (except certain limited circumstances):

- an amount equal to the product of (i) 100% minus the ABS's haircut percentage (as of the time the related loan was made) *times* (ii) the sum of the principal receipts for that payment date would be applied by the Custodian to reduce the principal amount of the loan;
    a. For example, if the original haircut was 10%, 90% of any remittance of principal on the ABS must immediately be repaid to the FRBNY.
- the balance of the principal reduction amount would be applied by the Custodian:

a. *first*, to pay any previously unpaid interest on the loan arising from certain interest shortfalls on the ABS, as further described in the MLSA; and

b. *second*, as a distribution to the related borrower's TALF Agent for disbursement to the borrower.

Payment at End of Term:

- The loan would be required to be repaid upon the loan's maturity. The borrower would be permitted to (1) repay the loan, at which time the FRBNY would release the collateral, or (2) arrange for the sale of the collateral and instruct the FRBNY to deliver the ABS to the counterparty against payment.

- The settlement amount of the sales transaction would be required to either be equal to or greater than the loan amount outstanding, or the borrower must make up any shortfall to repay the loan in full, including accrued interest, before the FRBNY would deliver the ABS. Any excess sale proceeds would be remitted back to the borrower.

- At maturity, a borrower would be permitted to surrender the collateral to the FRBNY, in lieu of repaying the outstanding principal or interest on a TALF loan, by delivering a Collateral Surrender and Acceptance Notice with respect to such loan by the maturity date, in which case the borrowers would not be responsible for any shortfall.

Prepayment:

A borrower would be permitted to prepay a TALF loan in full or in part at any time, without penalty.

If a borrower made a partial prepayment, collateral securing its loan would be released on a pro-rata basis, taking into consideration minimum ABS denominations.

Assignment:

- A borrower would be permitted to assign all of its obligations with respect to a TALF loan to another eligible borrower with the prior consent of the FRBNY. To effect a loan assignment, the ABS collateral securing the loan would be required to have been sold or transferred to the assignee (while remaining at all times in the master TALF collateral account).

- The FRBNY would assess the eligibility of the assignee as a borrower at the time of the transfer and confirm that the assignee has executed all the requisite documentation for the facility.

- The FRBNY would be permitted to delay or withhold its consent to any loan assignment for any reason and for any period of time and, in connection with the assignment of a loan secured by an item of legacy CMBS, the FRBNY would be permitted to condition its consent on the assignee's making additional representations and warranties with respect to that item of legacy CMBS at the time of the assignment.

Indemnification:

- Each borrower would be required to indemnify the FRBNY, the Custodian and the Administrator and their related parties for certain losses incurred by them in respect of the borrower's TALF loans and arising from, among other things, the performance of the MLSA or any action related to the ABS pledged to secure the loans.
- If collateral were later found to be ineligible, the Federal Reserve Bank of New York and TALF LLC would be entitled to indemnification by the issuer and the sponsor (and its parent, where applicable) to the extent of damages suffered, with further remedies available in the event of fraud.

Recourse:

The TALF loan was non-recourse and payable solely to the extent of funds received (i) by the Custodian in respect of interest, principal and other payments on the ABS securing the loan and (ii) as a result of remedies exercised following a Collateral Enforcement Event.

Non-Recourse

The above non-recourse provision did *not* apply, however, to:

- all obligations with respect to any loan as to which the borrower is determined, at any time, not to be an "eligible borrower" (on the basis of criteria in effect at the time the loan was made);
- all borrower obligations that arise as a result of the breach of certain borrower representations and warranties, including as to the status of the borrower as an eligible borrower and as to the status of the collateral as eligible collateral;
- all borrower obligations arising out of the FRBNY's right to reimbursement for amounts erroneously disbursed to the borrower as the result of an ABS issuer's incorrectly crediting interest or principal payments to a borrower's account;
- all borrower obligations with respect to a loan (including unpaid principal and interest on the loan), if the borrower fails to deliver a notice of Collateral Surrender to the Custodian by the loan's maturity date.

Collateral Enforcement Event:

The outstanding principal amount of a borrower's loan, plus all accrued and unpaid interest on the loan, would become immediately due and payable, and the FRBNY would be permitted to pursue standard lender remedies under the MLSA, upon the occurrence of certain specified events (each, a Collateral Enforcement Event), including the following:

- the borrower's failure to make payments on the loan when required to do so under the MLSA (subject to a 30-day grace period);
- the borrower's failure to perform or observe any of its obligations or agreements under the MLSA (or under any other instrument or agreement delivered or executed in connection with the MLSA), if the failure continues for a period of five business days;
- the breach of any representation or warranty made or deemed to be made by or on behalf of the borrower under or in connection with the MLSA or certain related certificates, documents or financial or other statements;
- certain insolvency events with respect to the borrower;
- the relevant lending agreement ceases to remain in full force and effect or any security interest securing the TALF loan ceases to be enforceable or to have the same priority as at the time of its creation;
- the arising of an encumbrance on any pledged ABS collateral which remains undischarged for a period of 5 business days; and
- the occurrence of any event of default (or "equivalent event or circumstance") under any indenture or other agreement governing the terms of any pledged ABS as a result of certain insolvency events with respect to the related ABS issuer.

Collateral Substitution:

A borrower would not be permitted to substitute collateral.

No Cross-Collateralization:

- Each TALF loan would be collateralized only by the ABS pledged in connection with that loan. If a Collateral Enforcement Event were to occur with respect to one of a borrower's loans, the FRBNY would not have recourse, as to that loan, to the ABS pledged in connection with the borrower's other loans.

Collateral Eligibility Requirements – Newly Issued CMBS:

Qualifying Assets

- The securities are U.S. dollar-denominated, cash (that is, not synthetic) CMBS
- The CMBS have (or have been provided on a preliminary basis, expected to be confirmed no later than the closing date) a credit rating in the highest long-term investment-grade rating category from at least two TALF CMBS-Eligible Rating Agencies and must not have a credit rating below the highest investment-grade rating category from any TALF CMBS-Eligible Rating Agency.[2]
- Such ratings were obtained without the benefit of any third-party guarantee and no TALF CMBS-Eligible Rating Agency has placed the CMBS on review or watch for downgrade.
- The CMBS evidences an interest in a trust fund consisting of one or more fully-funded, first-priority mortgage loans that are current in payment at the time of securitization, and not other CMBS, other securities or interest rate swap or cap instruments or other hedging instruments. If the trust fund contains a participation or other ownership interest in such a loan, then, following a loan default, the ownership interest is senior to or pari passu with all other interests in the same loan in right of payment of principal and interest. Each mortgage loan is a fixed-rate loan. Each mortgage loan does not provide for interest-only payments during any part of its remaining term.

Property Types

- The security for each mortgage loan includes a mortgage or similar instrument on a fee or leasehold interest in one or more income-generating commercial properties. Each property is located in the United States or one of its territories.

U.S. Origination

- All or substantially all (defined as at least 95% of the dollar amount) of the credit exposures underlying the CMBS are exposures that were originated by U.S.-organized entities or institutions or U.S. branches or agencies of foreign banks.

Payment Terms

- The CMBS entitles its holders to payments of principal and interest (that is, the CMBS is not an interest-only or principal-only security).

[2] For CMBS, the TALF CMBS-Eligible rating agencies were DBRS, Inc., Fitch Ratings, Moody's Investors Service, Realpoint LLC and Standard & Poor's.

- The CMBS bears interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates.

- The CMBS is not junior to other securities with claims on the same pool of loans.

- The CMBS is cleared through The Depository Trust Company.

Issuer

- The issuer of the CMBS is not an agency or instrumentality of the United States or a government-sponsored enterprise.

In-Place Underwriting

- Each mortgage loan was underwritten or re-underwritten recently prior to the issuance of the CMBS, generally on the basis of then-current in-place, stabilized and recurring net operating income and then-current property appraisals.

Pooling/Servicing Agreements

- The pooling and servicing agreement, trust agreement and other agreements governing the issuance of the CMBS and the servicing of its assets contain provisions to the following effects:

  a. if the class of the CMBS is one of two or more time-tranched classes of the same distribution priority, distributions of principal must be made on a pro rata basis to all such classes once the credit support is reduced to zero as a result of both actual realized losses and "appraisal reduction amounts";

  b. control over the servicing of the assets, whether through approval, consultation or servicer appointment rights, may not be held by investors in a class subordinate to the CMBS once the principal balance of that class is reduced to less than 25% of its initial principal balance as a result of both actual realized losses and "appraisal reduction amounts";

  c. a post-securitization property appraisal may not be recognized for any purpose under such agreements if the appraisal was obtained at the demand or request of any person other than the servicer for the related mortgage loan or the trustee; and:

  d. the mortgage loan seller has represented that, upon the origination of each mortgage loan, the improvements at each related property were in material compliance with applicable law.

- The securities are not subject to an optional redemption other than a customary clean-up call (as defined in the TALF Rules).

Collateral Eligibility Requirements – Legacy CMBS:

Qualifying Assets

- The securities are U.S. dollar-denominated, cash (that is, not synthetic) CMBS.
- Each legacy CMBS must evidence an interest in a trust fund consisting of fully-funded mortgage loans and not other CMBS, other securities or interest rate swap or cap instruments or other hedging instruments. A participation or other ownership interest in such a loan would be considered a mortgage loan and not a CMBS or other security if, following a loan default, the ownership interest is senior to or pari passu with all other interests in the same loan in right of payment of principal and interest.

Property Types

- The security for each mortgage loan must include (or, if payments due under the loan have been defeased, the security for the loan or its predecessor must have previously included) a mortgage or similar instrument on a fee or leasehold interest in one or more income-generating commercial properties.

U.S. Location

- As of the TALF loan subscription date, at least 95% of the properties, by related loan principal balance, must be located in the United States or one of its territories.

Payment Terms

- The legacy CMBS must entitle its holders to payments of principal and interest (that is, must not be an interest-only or principal-only security).
- Each legacy CMBS must bear interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates.
- Upon issuance, the legacy CMBS must not have been junior to other securities with claims on the same pool of loans.

Issuer

- The issuer of the legacy CMBS must not be an agency or instrumentality of the United States or a government-sponsored enterprise.

Collateral Eligibility Requirements – Non-Mortgage Backed ABS:

Qualifying Assets

- The securities are U.S. dollar-denominated cash (that is, not synthetic) ABS.
- The ABS have (or have been provided on a preliminary basis, expected to be confirmed no later than the closing date) a credit rating in the highest long-term or short-term investment-grade rating category from two or more eligible nationally recognized statistical rating organizations ("NRSROs") and do not have (including on a preliminary basis) a credit rating below the highest investment-grade rating category from an eligible NRSRO.
- Such ratings were obtained without the benefit of any third-party guarantee and are not on review or watch for downgrade.
- The underlying credit exposures of eligible ABS must be auto loans, student loans, credit card loans, equipment loans, floorplan loans, insurance premium finance loans, small business loans fully guaranteed as to principal and interest by the U.S. Small Business Administration, or receivables related to residential mortgage servicing advances (servicing advance receivables).

Payment Terms

- The securities do not bear interest payments that step up or step down to predetermined levels on specific dates.
- Either the securities are not subject to an optional redemption other than a customary clean-up call *or* the securities are backed by eligible servicing advance receivables and are subject to an optional redemption other than a customary clean-up call.
- The securities are cleared through The Depository Trust Company.

Collateral Eligibility Certification:

The issuer and a sponsor would be required to ensure that the information included in a prospectus or other offering document of an ABS they represent as eligible collateral under the TALF included a signed certification indicating, among other items, that (1) the ABS was TALF eligible and (2) the sponsor (or, if the sponsor is a special purpose vehicle, the sponsor's direct or indirect ultimate parent) had executed and delivered an undertaking to the FRBNY indemnifying it from any losses it may suffer if such certifications are untrue.

Covenants:

Among others, the borrower would be required to agree to:

- not exercise, and to refrain from exercising, any voting, consent or waiver rights with respect to any ABS securing a TALF loan (including any such right with respect to the declaration or waiver of an early amortization event or the recommencement of a revolving period under any ABS) without the FRBNY's prior written consent (which may be withheld or conditioned in the FRBNY's sole discretion) for so long as the MLSA remains in effect or any of the borrower's obligations with respect to a loan remain outstanding.

- promptly notify its TALF Agent upon becoming aware that its vote, consent or waiver is being sought as to any matter with respect to any ABS securing a TALF loan, including a description of the matter and any related prescribed response period.

- promptly comply with any instruction it receives from the FRBNY (including any instruction given by the FRBNY through the TALF Agent) with respect to any such vote, consent or waiver.

- promptly execute any agreement or document at the FRBNY's request and take any other actions that the FRBNY "reasonably deems necessary or desirable to carry out the terms of the [MLSA]," including the execution and delivery of any document the FRBNY deems necessary to grant, perfect or otherwise protect its security interest in the collateral.

- promptly provide the FRBNY (or use best efforts to cause the applicable issuer, servicer or trustee to provide the FRBNY) with all agreements governing the terms of any pledged ABS, and all related servicer and/or trustee reports (if applicable), reasonably requested by the FRBNY.

Key Representations and Warranties:

Borrower Representations

Among other things, each borrower would be required to represent and warrant (on a continuing basis so long as it has any outstanding loan obligations) that:

- With respect to each loan made to it (or, in the case of a permitted assignment, assumed by it), the borrower is an eligible borrower, determined on the basis of the criteria applicable to "eligible borrowers" in effect at the time the loan was made or assumed.

- At the time any loan is made to the borrower (or, in the case of a permitted assignment, at the time any loan is assumed by the borrower) and to the borrower's knowledge, all of the collateral securing the loan is eligible collateral, based on the borrower's review of the applicable offering materials (or, if the loan is secured by SBA Pool Certificates, based simply on the borrower's knowledge, without qualification). For purposes of determining the accuracy of this representation:

    a. the borrower is deemed to know the identity of each of its affiliates; and

    b. in the case of a permitted assignment with respect to any legacy CMBS, whether or not the CMBS ratings eligibility requirements set forth in the TALF Standing Loan Facility Procedures are satisfied is to be determined on the basis of the credit ratings in effect as of the date of the Permitted Assignment's effectiveness, notwithstanding anything to the contrary contained in the MLSA's definition of "CMBS Ratings Eligibility Requirements" or in the TALF Standing Loan Facility Procedures.

- For purposes of the borrower's representations and warranties in the MLSA (and, in turn, for purposes of the borrower nonrecourse provisions described above), collateral eligibility would be assessed only on the related loan closing date (or, in the case of a permitted assignment, on the date on which the loan is assumed), whereas borrower eligibility would be assessed at all times during which the borrower has outstanding TALF loan obligations.

TALF Agent Representations

Among other things, each TALF Agent would be required to represent and warrant (on a continuing basis so long as any of its applicable borrowers have any outstanding loan obligations) that:

- at the time any loan is made to or assumed by a borrower, the borrower is an eligible borrower and

- at the time any loan is made to or assumed by a borrower, all of the collateral securing the loan is eligible collateral (which TALF Agent representation does not include a "knowledge" qualifier, unlike the corresponding borrower representation).

Unlike borrowers, TALF Agents represented as to their borrowers' "eligible borrower" status only as of the time the related loans were made or assumed, and did not represent as to the "eligible collateral" status of legacy CMBS.

Legacy CMBS Representations

In general, the MLSA's borrower representations and warranties were not collateral-specific. However, with respect to a Legacy CMBS securing a TALF loan, the borrower would be required to make a number of representations and warranties not required for other types of collateral, including the following:

- the borrower is not an affiliate of the United States registered broker-dealer from which the borrower directly acquired the legacy CMBS, and, to the best of the borrower's knowledge after diligent inquiry, none of the borrower's affiliates directly sold all or any portion of the legacy CMBS to the Market Intermediary;

- the borrower's agreement to purchase the legacy CMBS was made on an arm's-length basis after the CMBS loan subscription date that occurred in the calendar month preceding the related loan closing date;

- the conditions to settlement of the borrower's purchase of the legacy CMBS did not and do not include the performance of any material obligation on the part of either the borrower, as purchaser, or the seller, except for the borrower's payment of the purchase price and the seller's delivery of the legacy CMBS, and the terms of the purchase were to the effect that the borrower, upon such payment, acquired all of the right, title and interest in and to the legacy CMBS and assumed the risks of the ownership of the legacy CMBS;

- the purchase price payable by the borrower for the legacy CMBS consisted only of cash in the amount stated in the related Sales Confirmation; and

- Additional legacy CMBS representations including that the borrower has not received (and is not entitled to receive) certain kinds of non-cash consideration for its agreement to acquire the legacy CMBS and has not entered into certain hedging, loss limitation and similar arrangements with respect to the legacy CMBS.

Inspection and Reports:

The MLSA required borrowers to permit the FRBNY and any representatives designated by it (including representatives of the Federal Reserve Board) to "visit, audit and inspect the financial records" of the borrower during normal business hours from time to time as requested and "to make extracts from and copies of such financial records" and permitted the FRBNY and its designated representatives to discuss the borrower's affairs, finances and condition with the borrower's directors, officers and employees and its independent accountants.

However, the MLSA provided that the rights of the FRBNY and its representatives in this regard were limited to the extent that the matters in question related to the borrower's loans and collateral or the borrower's obligations under the MLSA.

Borrowers would also be required to provide the FRBNY with any reports or statements it reasonably requests.

Customer Agreement with TALF Agents: Each customer agreement between a borrower and a TALF Agent would be required to contain the terms set forth in Appendix 2 to the MLSA (or substantively equivalent alternative terms), which related primarily to agency, security interests, notices, instructions, know your customer information and the disbursement of funds.

For more information, please contact any member of the Firm's Financial Institutions Group, including those listed below.

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