

TALF Master Loan And Security Agreement

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The Federal Reserve Bank of New York (FRBNY) recently posted on its website a revised version of the Master Loan and Security Agreement (MLSA) for the Term Asset-Backed Securities Loan Facility (TALF), a lending program launched by the Federal Reserve Board in March¹ and supported in part by an agreement of the Treasury Department to provide certain credit protection to the FRBNY. The MLSA expands on certain of the terms set forth in the FRBNY's Terms and Conditions and Frequently Asked Questions relating to the TALF (together, Terms and FAQs)² and contains specific provisions governing borrowers' obligations in respect of TALF loans.

Under the TALF, the FRBNY will make up to \$200 billion of loans available to eligible borrowers to enable them to purchase highly rated assetbacked 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. Some of these ABS types were covered by the terms of the TALF when it was initially launched, and others were added in later months. In August, the Federal Reserve Board and the Treasury Department stated that they did not anticipate any further additions to the types of ABS eligible for TALF but would

reconsider if financial or economic developments so warranted. TALF loans secured by commercial mortgagebacked passthrough securities (CMBS) issued on or after January 1, 2009 (Newly Issued CMBS) will be made through June 30, 2010. TALF loans secured by all other types of eligible collateral will be made through March 31, 2010. The Federal Reserve Board has stated that it will consider whether unusual and exigent circumstances in the future warrant further extension of the facility.

The MLSA is an agreement entered into among the FRBNY, as lender, The Bank of New York Mellon, as administrator (Administrator) and custodian (Custodian), and each TALF Agent³ through which the FRBNY makes its loans to TALF borrowers. The MLSA incorporates terms from the TALF Standing Loan Facility Procedures. By accepting loans under the TALF, borrowers become bound by the provisions that relate to them and their loans in the MLSA—representations, warranties, covenants and indemnification, among others. TALF borrowers themselves are not parties to the MLSA. Instead, each borrower must execute a customer agreement authorizing the borrower's TALF Agent to execute the MLSA as the borrower's agent with respect to the TALF loans requested through that TALF Agent. Each customer agreement between a borrower and a TALF Agent must contain the terms set forth in Appendix 2 to the MLSA (or substantively equivalent alternative terms), which relate primarily to agency, security interests, notices, instructions, know your customer information and the disbursement of funds. The final form of any TALF Agent's customer agreement with a given borrower must

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be agreed to by the TALF Agent and the borrower. Set forth below is a summary of the MLSA's key terms.⁴

LOAN REQUEST PROCEDURES

The principal function of each TALF Agent under the MLSA is to serve as its borrowers' intermediary in requesting loans from the FRBNY. A detailed summary of the loan request timeline is set forth in *Annex A*, which also includes brief descriptions of the forms of certification as to TALF eligibility, sponsor indemnity undertaking, pool assembler undertaking, auditor attestation and agreed upon procedures reports posted to the TALF website.⁵

LOAN CLOSING CONDITIONS

At the time each loan is made, the following conditions must be satisfied:

- the borrower must be an entity that satisfies the criteria applicable to "eligible borrowers" as set forth in the TALF Standing Loan Facility Procedures;
- the principal amount of the loan must be at least \$10,000,000;
- the loan must be secured (i) by ABS having an aggregate Collateral Value (as defined in Annex A), measured as of the third business day before the loan closing date,⁶ at least equal to the principal amount of the loan and (ii) unless the loan is secured by SBA Pool Certificates, by a single "item of eligible collateral" (i.e., ABS with the same CUSIP or other unique identifying number);
- the ABS must not be backed by underlying credit exposures that were originated⁷ or securitized by the borrower or any of its affiliates, and all other criteria applicable to eligible collateral, as set forth in the TALF Standing Loan Facility Procedures, must be satisfied with respect to each ABS securing the loan;
- each distinct item of eligible collateral securing the loan must have a Market Value (as defined in Annex A), measured as of the third business day before the loan closing date, of at least \$10,000,000 (or, if the item of eligible collateral is an SBA Pool Certificate, at least \$1,000,000);
- in the case of a fixed rate loan, the ABS securing the loan must bear interest at a fixed rate (or, if the loan is secured by CMBS, either a fixed rate or a rate that varies on the basis of the weighted average of the fixed rates of the mortgage loans underlying the CMBS);
- in the case of a floating rate loan, (i) the ABS securing the loan must bear interest at a floating rate, (ii) if the loan has an interest rate tied to the federal funds target rate, the collateral for the loan must consist solely of SBA Pool Certificates and (iii) if the loan has an interest rate tied to the "Prime Rate" (as defined in the MLSA), the collateral for the loan must consist solely of ABS (x) backed by private student loans and (y) bearing interest at a rate set by reference to a published or quoted prime rate of interest;
- the administrative fee for the loan (currently, 20 basis points of the loan amount for loans secured by CMBS and 10 basis points of the loan amount for all other loans) must have been received in the FRBNY's master settlement account with the Custodian; and
- in general, in the case of ABS to be acquired by a borrower on the loan closing date with proceeds of the loan (New Acquisition Collateral), the related Haircut Amount and all Other Closing Amounts (each as defined in *Annex A*) must have been received in the FRBNY's master settlement account.⁸
- Unlike other ABS securing TALF loans, Legacy CMBS may be acquired by a borrower only in secondary market transactions and must be acquired before the related TALF loan is made (specifically, on or before the related loan subscription date but after the immediately preceding loan subscription date). Therefore, Legacy CMBS cannot constitute New Acquisition Collateral.

In addition to satisfaction of the itemized conditions, which are set forth in the MLSA, the Terms and FAQs provide that TALF loan approval requires the related ABS to satisfy certain standards (credit quality, transparency and simplicity of structure) in connection with a risk assessment to be performed by the FRBNY.

FRBNY DISCRETION TO DECLINE LOAN REQUEST

The MLSA provides that the FRBNY is under no obligation to make, increase, renew or extend any loan to any borrower. Consequently, a borrower risks being committed to purchase ABS as to which no TALF loan may be forthcoming.

If the FRBNY declines to make a requested loan, the FRBNY will be required to instruct the Custodian to return (i) any Haircut Amount and Other Closing Amounts delivered by the borrower with respect to the loan, (ii) each ABS delivered by the borrower and (iii) if the

conditions set forth above under “*Loan Closing Conditions*” (other than receipt by the Custodian of the Haircut Amount and Other Closing Amounts) were or would have been satisfied on the related loan closing date and each related item of eligible collateral had been received in the FRBNY’s master settlement account with the Custodian on or prior to the loan closing date, the administrative fee delivered by the borrower with respect to the requested loan. If, on the loan closing date, the Custodian does not receive all of the ABS expected to be delivered by the borrower—because, for example, the related ABS transaction fails to close or The Depository Trust Company fails to effect a timely transfer of the ABS to the Custodian—the FRBNY will retain the administrative fee for that loan.

APPLICATION OF PAYMENTS OF ABS INTEREST AND PRINCIPAL; INTEREST ON LOANS; LOAN PREPAYMENTS

ABS Interest. On each Payment Date (as defined below), 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 (Interest Receipts) will be applied on the Payment Date as follows (except as otherwise provided under the alternative cash flow application provisions described in “*Alternative Application of Interest and Principal after Certain Specified Events*” below):

- *first*, to the payment of the monthly interest on the related loan (such interest to be computed on the basis of a 365 day year and the actual number of days elapsed);
- *second*, to the payment of any then payable “Required Monthly Amortization Amount,” which is the amount required to amortize, on a monthly basis, the premium of any ABS (other than Legacy CMBS) whose Market Price exceeded 100 percent as of the third business day before the related loan closing date (Above Par ABS);⁹ and
- *third*, to the extent of any excess (except as otherwise provided under “*Excess ABS Interest Receipts*” and the last paragraph of “*Alternative Application of Interest and Principal after Certain Specified Events*” below), to the borrower’s TALF Agent for disbursement to the borrower.

Application of Required Monthly Amortization Amounts. Amounts applied to the payment of a loan’s Required Monthly Amortization Amount pursuant to the second bullet point under “*ABS Interest*” above will reduce the loan’s outstanding principal amount.

Excess ABS Interest Receipts. Where a borrower selects a five year, rather than a three year, TALF loan (this right being limited to loans secured by CMBS, SBA Pool Certificates, Development Company Participation Certificates or ABS backed by student loans), the amount, if any, by which Interest Receipts on the collateral securing the loan exceed the interest payable on the loan¹⁰ (the amount of such excess, “net carry”) in any loan year will be applied to reduce the loan’s principal balance to the extent that the net carry is greater than 25 percent of the Haircut Amount in the first three loan years (or, in the fourth and fifth loan years, greater than 10 percent and five percent, respectively, of the Haircut Amount).

Similarly, for a three year fixedrate loan secured by a Legacy CMBS, the amount of net carry, if any, in any loan year will be applied to reduce the loan’s principal balance to the extent that the net carry is greater than 30 percent of the Haircut Amount in any loan year.

In each of the foregoing cases, the balance of the net carry will be remitted to the borrower.

For purposes of calculating the portion of net carry to be applied to the principal of a TALF loan, net carry is determined with the same frequency as the remittance of principal and interest on the ABS securing the loan (that is, monthly, quarterly or semiannually, as the case may be).

ABS Principal. On each Payment Date, all ABS principal payments received by the Custodian on or before the business day immediately preceding the Payment Date (Principal Receipts) will be applied on the Payment Date as follows (except as otherwise provided under “*Redemption Option*” and under the alternative cash flow application provisions described in “*Alternative Application of Interest and Principal after Certain Specified Events*” below):

- an amount equal to the product of (i) 100 percent minus the ABS’s haircut percentage (as of the time the related loan was made) and (ii) the sum of the Principal Receipts for that Payment Date (the Principal Receipts Amount) will be applied by the Custodian to reduce the principal amount of the loan; and
- the balance of the Principal Receipts Amount will be applied by the Custodian:

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

Redemption Option. If a loan is secured by an ABS that entitles its issuer to redeem it at a price less than its then outstanding principal amount (a below-par redemption option), the *entire* Principal Receipts Amount resulting from the exercise of the option must be applied to repay the loan's principal amount and any unpaid monthly interest shortfalls. This requirement also applies to any loan secured by an Above Par ABS whose issuer is entitled to redeem it at a price less than the sum of its outstanding principal amount and all Required Monthly Amortization Amounts required to be paid on the loan for the Above Par ABS's remaining average (or, if applicable, weighted average) life, calculated using the relevant TALF prepayment assumption.

With limited exceptions described in the Terms and FAQs, redemption options are permitted only for ABS backed by eligible servicing advance receivables, and the FRBNY will no longer consider the pledge of ABS with below-par redemption options. In any event, no borrower may pledge ABS with a redemption option (other than pursuant to a "customary" clean-up call), unless, on the basis of the borrower's review of the applicable ABS offering documents, the borrower confirms that the ABS issuer has received the FRBNY's acceptance of the redemption option. The Terms and FAQs define a "customary" clean-up call as one that is exercisable by the servicer or the depositor when the remaining balance of the issuer's assets or liabilities is not more than 10 percent of the original balance of such assets or liabilities. (A higher percentage will be permitted if customarily used by the related sponsor in securitizations offered before the TALF was established.)

Alternative Application of Interest and Principal after Certain Specified Events. The specified events, with respect to the ABS securing a TALF loan, are:

- in the case of an ABS that is not a CMBS, an unwaived event of default;
- in the case of an ABS with a revolving (or master) trust, an unwaived early amortization event (including an event that, if denoted by a different term, has the same effect); and

- in the case of a CMBS, a "CMBS Credit Support Depletion Event" (i.e., a circumstance deemed to exist if (and for as long as) (i) the aggregate outstanding certificate principal balance of the classes of securities providing credit support to the CMBS minus (ii) the aggregate amount of "appraisal reduction amounts" in effect with respect to the mortgage loans and REO properties underlying the CMBS is less than or equal to zero).

If, as of any TALF loan determination date, any of the foregoing events has occurred and is continuing with respect to an ABS securing the related loan (and, in the case of the occurrence of an early amortization event that is continuing during what would otherwise be a revolving period, the revolving period has not been recommenced with the consent of the security holders in accordance with the related governing agreement), all Interest Receipts and Principal Receipts received in respect of the ABS on or before the loan determination date must be applied by the Custodian on the related Payment Date as follows:

- *first*, to the payment of the monthly interest and the Required Monthly Amortization Amount, if any, on the TALF loan (but only to the extent not paid by the application of Interest Receipts from other ABS securing the loan, pursuant to "ABS Interest" above);
- *second*, to reduce the principal amount of the loan until it has been repaid in full; and
- *third*, to the extent of any excess, to the borrower's TALF Agent for disbursement to the borrower.

The Custodian is not required to apply Interest Receipts and Principal Receipts as specified in the preceding sentence if the Custodian has not received written notice of the occurrence of the event of default, early amortization event or CMBS Credit Support Depletion Event from the ABS's trustee or issuer by 12:00 noon¹¹ on the business day immediately preceding the Payment Date.

If a borrower receives any Principal Receipts with respect to an ABS because, under the circumstances described in the preceding paragraph, the Custodian did not apply payments on the ABS as contemplated by the second preceding paragraph, the borrower must promptly repay the FRBNY, upon its request, the amount so received by the borrower (the Applicable Principal Receipts Amount).

If the borrower has not repaid the FRBNY the entire Applicable Principal Receipts Amount by the fifth business day preceding the next Payment Date (the amount not repaid, the Excess Principal Receipts Amount), the FRBNY has the right to apply all Interest Receipts in respect of the ABS on that Payment Date (and on each subsequent Payment Date) to repay the TALF loan's outstanding principal amount, up to the Excess Principal Receipts Amount.

Investment Earnings. Net earnings on investments by the Custodian of Interest Receipts and Principal Receipts on pledged ABS are for the FRBNY's account. The FRBNY is responsible for all net losses, if any, on such investments.

Interest Shortfalls. The unpaid amount of each monthly interest shortfall on any loan will be added to the monthly amount of interest due on the loan for the following loan accrual period. Revisions to an earlier MLSA version eliminated a provision requiring interest to accrue on interest shortfalls.

Additional Interest if NonRecourse Provision of Loan Becomes Inapplicable. As discussed below, TALF loans are intended to be non-recourse to borrowers. At all times during which the FRBNY has a right of recourse against a borrower as a result of the related loan's nonrecourse provision having become inapplicable (other than pursuant to the last bullet point under "*NonRecourse to Borrowers; Inapplicability under Certain Circumstances*" unless the loan's maturity date has occurred), the loan's outstanding principal amount and any accrued and unpaid interest will bear interest at the otherwise applicable rate for such loan plus two percent per annum.

Optional Prepayment of Principal. A borrower may optionally prepay the outstanding principal amount of any loan, at any time, in whole or in part, without penalty, upon not less than four business days' advance written notice by the TALF Agent to the Custodian and the Administrator, except that no optional prepayment may be made on any scheduled TALF loan closing date or during the period from and including the Loan Accrual Date (the 15th day of each calendar month or, if that is not a business day, the next business day) through and including the Payment Date (the third business day after the Loan Accrual Date).

Pro Rata Release of Security Interest on Pledged ABS. Upon the effectiveness of any partial optional prepayment of the principal amount of any loan, as described above, the related borrower is not entitled to select which of the pledged ABS are to be released from the FRBNY's lien. Instead, the Custodian will release a ratable portion of *each* ABS from the pledge (subject to adjustment in the Custodian's reasonable discretion to reflect the minimum denominations

applicable to the ABS). (Because of recent changes to the form of the MLSA, the provision described in this paragraph is now of practical significance only with respect to loans secured by multiple SBA Pool Certificates. As noted above under "*Loan Closing Conditions*," TALF loans may not, in general, be secured by multiple items of eligible collateral.)

COLLATERAL ENFORCEMENT EVENTS

The outstanding principal amount of a borrower's loan, plus all accrued and unpaid interest on the loan, will become immediately due and payable, and the FRBNY may 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;
- 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; 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.

NO CROSS-COLLATERALIZATION

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

NONRECOURSE TO BORROWERS; INAPPLICABILITY UNDER CERTAIN CIRCUMSTANCES

TALF loans are intended to be nonrecourse to borrowers; i.e., the obligations of each borrower under a loan are 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 the exercise of remedies with respect to the ABS following the occurrence of a Collateral Enforcement Event. The preceding nonrecourse provision is, however, inapplicable to:

- all obligations with respect to any loan as to which the borrower is determined, at any time (on the basis of criteria in effect at the time the loan was made), not to be an “eligible borrower”;
- 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 as described under “*Key Representations and Warranties*” below;
- 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 arising out of the FRBNY’s repayment rights described in the two last paragraphs of “*Alternative Application of Interest and Principal after Certain Specified Events*” above; and
- 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 (as described below) to the Custodian by the loan’s maturity date.

COVENANTS AS TO VOTING, CONSENT AND WAIVER RIGHTS

- Each borrower must covenant that so long as the MLSA remains in effect or any of the borrower’s obligations with respect to a loan remain outstanding, the borrower will not exercise, and will not 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).

- The borrower must 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.
- The borrower must 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.

CONSENT TO FRBNY’S ASSIGNMENT OF RIGHTS TO COLLATERAL PURCHASER

Upon a Collateral Surrender or a Collateral Enforcement Event, the related borrower and TALF Agent(s) will be deemed to have consented to the FRBNY’s assignment, to any purchaser of the related collateral, of (i) the borrower’s and TALF Agents’ representations and warranties under the MLSA and (ii) the FRBNY’s rights of recourse, if any, against the borrower and the TALF Agents as described in the MLSA.

REPLACEMENT OF TALF AGENT

A borrower may at any time replace a TALF Agent by directing it to give not less than ten business days’ advance written notice of its replacement to the Custodian and the Administrator. The replacement will become effective upon the satisfaction of certain conditions set forth in the MLSA, including the replacement TALF Agent’s written confirmation to the Custodian and to the outgoing TALF Agent that the replacement TALF Agent has accepted the borrower’s appointment and has agreed to perform all obligations set forth in the MLSA with respect to the borrower’s loans.

Permitted Assignments of a Loan

- Except for a loan assignment that (i) is made to an “eligible borrower,” (ii) takes place simultaneously with the sale of the ABS securing the loan and (iii) is consented to by the FRBNY (a Permitted

Assignment), no borrower may assign a loan or any of its rights or obligations under the MLSA, or sell, pledge or otherwise permit the existence of any right or claim to any ABS securing the loan (other than the security interest granted to the FRBNY).

- The FRBNY may delay or withhold its consent to any loan assignment for any reason and for any period of time. In particular, in connection with the assignment of a loan secured by an item of Legacy CMBS, the FRBNY may condition its consent on the assignee's making such additional representations and warranties, if any, as the FRBNY requires with respect to that item of Legacy CMBS at the time of the assignment.
- The MLSA provides that the FRBNY will not consent to any loan assignment after March 31, 2010 (or, in the case of Newly Issued CMBS, June 30, 2010) unless it determines that unusual and exigent circumstances exist in the financial markets.¹² A TALF loan's assignee will become subject to the MLSA's borrower representations, warranties and covenants with respect to the loan and the pledged collateral.

ONSITE INSPECTION RIGHTS OF FRBNY; REPORTS BY BORROWERS

As noted in the Terms and FAQs, the FRBNY is developing an "onsite inspection program" to carry out its inspection rights under the MLSA. The MLSA requires 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 permit 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 provides that the rights of the FRBNY and its representatives in this regard are limited to the extent that the matters in question relate to the borrower's loans and collateral or the borrower's obligations under the MLSA. Borrowers will also be required to provide the FRBNY with any reports or statements it reasonably requests.

CONFIDENTIALITY

Although the MLSA requires the FRBNY to use "reasonable best efforts" to keep in confidence

nonpublic information made available to it by borrowers and their TALF Agents, the MLSA expressly permits the FRBNY to disclose such information to the Federal Reserve Board, the Treasury Department and any of their respective "oversight bodies" (presumably intended to include Congress) upon their request or demand and does not require any of these parties to keep such information confidential.

KEY REPRESENTATIONS AND WARRANTIES

Eligible Borrowers; Eligible Collateral. Among the representations and warranties each borrower is required to make under the MLSA, it will 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), all of the collateral securing the loan is, to the borrower's knowledge, eligible collateral, based on the borrower's review of the applicable preliminary and/or final prospectus, offering memorandum or other comparable offering materials, including any supplements and updates (collectively, Offering Materials), and, if applicable, servicer and/or trustee reports (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:
 - the borrower is deemed to know the identity of each of its affiliates¹³; and
 - 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.

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- 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 is 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 is assessed at all times during which the borrower has outstanding TALF loan obligations.
- Similarly, each TALF Agent will be required to represent and warrant (on a continuing basis so long as any of its borrowers has outstanding loan obligations) that, among other things, at the time any loan is made to or assumed by a borrower, (i) the borrower is an eligible borrower and (ii) all of the collateral securing the loan is eligible collateral. Unlike borrowers, TALF Agents are not afforded the benefit of a "knowledge" qualifier with respect to their representation that collateral is eligible collateral. However, unlike borrowers, TALF Agents:
 - represent as to their borrowers' "eligible borrower" status only as of the time the related loans are made or assumed; and
 - do not represent as to the "eligible collateral" status of Legacy CMBS.

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

- the borrower is not an affiliate of the United States registered brokerdealer (Market Intermediary) 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'slength 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; and

- the purchase price payable by the borrower for the Legacy CMBS consisted only of cash in the amount stated in the related Sales Confirmation (as defined in *Annex A*).

Additional Legacy CMBS Representations required to be made by the borrower include representations and warranties to the effect that the borrower has not received (and is not entitled to receive) certain kinds of 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.

In the case of any Permitted Assignment of a loan secured by Legacy CMBS, the assignee is not required to make the Legacy CMBS Representations as of the date of the Permitted Assignment. However, as the successor borrower under the loan, the assignee will be fully liable for the Legacy CMBS Representations made by the predecessor borrower as if the assignee had been the predecessor borrower and had itself made the Legacy CMBS Representations when they were made by the predecessor borrower (such liability to survive the effectiveness of the Permitted Assignment). The assignee will also be required to make any further representations and warranties required by the FRBNY, as discussed above under "*Permitted Assignments of a Loan*."

Breaches. Breaches of representations and warranties on the part of a borrower under or in connection with the MLSA constitute Collateral Enforcement Events and, as such, permit the FRBNY to declare the borrower's loans due and payable. Any such breach could give rise to indemnification obligations by the borrower to the parties identified under "*Indemnification*" below. Additionally, a borrower's breach of its representations and warranties could result in recourse to that borrower, notwithstanding any Collateral Surrender.

INDEMNIFICATION

Each borrower will 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.

“FURTHER ASSURANCES” COVENANTS

Among the covenants each borrower is required to make under the MLSA, it will be required to agree, at the FRBNY’s request, to promptly execute any agreement or document and take any other actions that the FRBNY “reasonably deems necessary or desirable to carry out the terms of the [MLSA].” The provision is presumably in the nature of a “further assurances” clause, and it expressly includes the execution and delivery of any document the FRBNY deems necessary to grant, perfect or otherwise protect its security interest in the collateral.

Borrowers must also 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.

COLLATERAL SURRENDER

Regardless of whether any Collateral Enforcement Event with respect to a loan has occurred and is continuing, the borrower may at any time surrender all of the ABS securing the loan (a Collateral Surrender). The FRBNY will agree to accept the surrender in full payment, discharge and satisfaction of the loan (subject to any right of recourse the FRBNY may have against the borrower under the circumstances set forth above under “*NonRecourse to Borrowers; Inapplicability under Certain Circumstances*”) but would also acquire all of the borrower’s rights (including any equity) in the ABS. Consequently, the borrower would be expected to exercise the collateral surrender right (i) on the date of the loan’s maturity, (a) if, by then, the FRBNY had not received all outstanding principal and interest on the loan or (b) if the borrower determined that the cost of holding or disposing of the ABS after the maturity date would exceed the borrower’s equity in the ABS or (ii) before the loan’s maturity, if, and at such time as, the borrower determined the present value of the projected cash flows on the ABS was less than the present value of the amounts payable on the loan (i.e., the borrower determined there was no equity in the ABS), and the cash flow on the ABS in the then current month was insufficient to pay in full the interest due on the loan on the related Payment Date.

TALF AGENTS MAY BORROW UNDER TALF

A TALF Agent or any of its affiliates (or any other entity formed or sponsored by, or controlled or managed by or otherwise affiliated with, a TALF Agent or any of its affiliates) may also obtain TALF loans as a borrower, if it satisfies all “eligible borrower” conditions with respect to the applicable loans. However, if the TALF Agent or any of its affiliates have acted as the underwriter of any ABS proposed as collateral for such loans, the TALF Agent must submit to the FRBNY a conflict of interest identification and remediation plan designed to address actual or potential conflicts of interest with respect to the proposed borrowing.

LIMITATIONS ON LIABILITY

Each party to the MLSA waives any right it may have to claim or recover special, indirect, exemplary, punitive or consequential damages, including lost profits. Although TALF borrowers are not nominally parties to the MLSA, in the sense that they do not execute the MLSA, the waiver provision, like other MLSA provisions, applies to them because TALF Agents execute the MLSA on their borrowers’ behalf, and the customer agreements require borrowers to authorize such execution. Claims may be brought against the Administrator or the Custodian only to the extent arising out of their gross (as distinguished from ordinary) negligence, bad faith or willful misconduct, as stated in a final determination rendered by a court of competent jurisdiction.

AMENDMENT OF THE MLSA

The FRBNY may, in its sole discretion, amend the MLSA without any borrower’s consent (although notice of the amendment must be made via a posting to the TALF website). After any such amendment, any borrower’s pledge of ABS, any request for a loan, or the incurrence of any other obligation will constitute the borrower’s agreement to the amendment as of the effective date of the amendment. No such amendment, however, will affect the rights or obligations of any borrower (or any TALF Agent) with respect to any loan outstanding before the amendment’s effectiveness.

ANNEX A

Loan Request Procedures¹⁴

Deliveries Before Submission of Requests for Loans Secured by Newly Issued CMBS. As a condition to submitting borrowers' requests for TALF loans to be secured by Newly Issued CMBS, TALF Agents must make the following deliveries to the FRBNY and the Custodian by the dates and times specified below:

- **8th Business Day (5 p.m.) before Loan Subscription Date.** Offering Materials for Newly Issued CMBS (in preliminary form if final Offering Materials are not then available).
- **6th Business Day (5 p.m.) before Loan Subscription Date**
 - Copy of the AUP Report (Industry) Report (i.e., the customary agreed upon procedures report addressed and delivered to, among others, the sponsor and, as applicable, the underwriter or initial purchaser in connection with the issuance of the Newly Issued CMBS) relating to the Offering Materials.
 - AUP Report (TALF) Report (i.e., TALF specific agreed upon procedures report, covering, among other things, certain matters as to the Newly Issued CMBS's TALF eligibility, and addressed to the FRBNY and its TALF special purpose vehicle affiliate) relating to the Offering Materials.
- **Ongoing/ 3rd Business Day (5 p.m.) before Loan Subscription Date**
 - No later than the business day after any supplement to the Newly Issued CMBS Offering Materials is furnished to prospective investors, the borrower must deliver that supplement, together with the related AUP Report (TALF) and an update to the earlier AUP Report (Industry), to the FRBNY and the Custodian.
 - However, delivery of all Offering Material supplements, AUP Reports (TALF) and AUP Reports (Industry) with respect to Newly Issued CMBS must be made to the FRBNY and the Custodian no later than 5 p.m. on the third business day before the loan subscription date. The Offering Materials with respect to any such Newly Issued CMBS may not be supplemented after that time (other than with respect to final pricing information).

Loan Requests and Other Deliveries Due by Loan Subscription Date. On each loan subscription date, no later than the time posted by the FRBNY on the TALF website, a TALF Agent must submit to the FRBNY a request for loans on behalf of each of the TALF Agent's borrowers. The loan request is to be completed by the TALF Agent (i) in accordance with instructions provided from time to time by the Custodian and (ii) in the form called for by Appendix 3A (or, in the case of a loan to be secured by CMBS, Appendix 3B) to the MLSA. The Appendix 3A and Appendix 3B information includes information about the borrower and the ABS to be pledged and, together with the materials described below, must be collected by the TALF Agent from its borrowers before the loan subscription date.

- Not later than the loan request submission deadline on each loan subscription date, a TALF Agent is required to deliver to the Custodian preliminary and/or final Offering Materials, to the extent then available to the TALF Agent (and to the extent not previously delivered), with respect to all ABS (other than SBA Pool Certificates and Legacy CMBS) that each of the TALF Agent's borrowers intend to pledge as collateral.
- Except in the case of Development Company Participation Certificates, all Offering Materials required to be delivered to the Custodian must contain a TALF eligibility certification, which must include, among other things, statements to the effect that:
 - the related ABS are eligible collateral for the TALF;
 - the independent accounting firm that is performing certain procedures for the benefit of the FRBNY in connection with the offering of the ABS is required, in certain circumstances where fraud or illegal acts are suspected to have occurred, to make reports to the TALF compliance fraud hotline;
 - the sponsor and the issuer of the related ABS will notify the FRBNY and all registered holders of the ABS (via press release) if they determine that certain statements in the certification were incorrect when made or have ceased to be correct;
 - the disclosure in the Offering Materials, either separately or when taken as a whole together with all information provided by or on behalf of the sponsor and the issuer to any rating agency in connection with the offering of the ABS, does not contain any untrue statement of

- material fact and is not made misleading by the omission of any material fact;
 - the sponsor (and, if the sponsor is a special purpose vehicle, the sponsor's direct or indirect ultimate parent) has executed an Indemnity Undertaking (as described below); and
 - the sponsor and the issuer agree that, if the ABS at any time fail to be eligible collateral after being pledged to the FRBNY under the MLSA, the sponsor and the issuer will provide the Treasury Department, the Special Inspector General of the Troubled Asset Relief Program, and the Comptroller General access to the issuer's and the sponsor's personnel and to any books, papers, records or other data in their possession, custody or control to the extent relevant to ascertaining the cause and nature of such failure.
 - Except in the case of SBA Pool Certificates, Development Company Participation Certificates and Legacy CMBS, for which TALF eligibility certifications are not required, (i) the form of the TALF eligibility certification must be included in all preliminary Offering Materials and (ii) a copy of the signed certification (reflecting execution by the sponsor and the issuer) must be included in all final Offering Materials.
 - For purposes of the TALF eligibility certification for ABS other than CMBS, the "issuer" is the legal entity that issues the ABS, and the "sponsor" is the legal entity that is the sponsor of the ABS issuance. For purposes of the TALF eligibility certification for Newly Issued CMBS, the "issuer" is the legal entity that serves as the depositor in the CMBS issuance, and the "sponsor" is the legal entity that is affiliated with the depositor and is a sponsor of the CMBS issuance.
- 5th Business Day before Loan Closing Date***
- Not later than 12:00 noon on the fifth business day before each scheduled loan closing date, with respect to any Legacy CMBS to be pledged as security for a TALF loan, the TALF Agent must submit to the Custodian a customary sales confirmation (Sales Confirmation) that:
 - is generated by the Market Intermediary from which the borrower directly acquired the Legacy CMBS;
 - includes evidence that the settlement date of the purchase was on or before the related loan subscription date; and
 - includes the price paid by the borrower for the Legacy CMBS.
- The Terms and FAQs provide that Rule 10b-10 confirmations, as well as other written sales confirmations (including e-mail confirmations that contain the required pricing information and are customarily provided by broker-dealers before mailing Rule 10b-10 confirmations), also constitute acceptable Sales Confirmations.
- Not later than 12:00 noon on the fifth business day before each scheduled loan closing date, with respect to any Newly Issued CMBS to be pledged as security for a TALF loan, the TALF Agent:
 - in the case of New Acquisition Collateral, must submit to the Custodian a Sales Confirmation that:
 - is generated by the brokerdealer through which the borrower is to purchase the Newly Issued CMBS; and
 - includes the price to be paid by the borrower for the Newly Issued CMBS;
 - must submit to the Custodian an undertaking (an Indemnity Undertaking) by the sponsor (and, if applicable, the sponsor's ultimate parent) to indemnify the FRBNY and its TALF special purpose vehicle affiliate from any losses they may suffer from the breach of any representation, warranty or covenant made in the related TALF eligibility certification; and
 - may submit to the Custodian, in the case of Newly Issued CMBS to be issued on the loan closing date, a revised loan request reflecting any reductions in the amount of the Newly Issued CMBS that the TALF Agent's borrowers expect to be able to deliver on the loan closing date as a result of the actual allocations of the Newly Issued CMBS by the related underwriters.
 - For purposes of the Indemnity Undertaking, the "sponsor" is (i) in the case of Newly Issued CMBS, the legal entity that is affiliated with the depositor and is a sponsor of the CMBS issuance and (ii) in the case of ABS other than CMBS (see below), the sponsor of the ABS issuance.

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4th Business Day before Loan Closing Date. Not later than 12:00 noon on the fourth business day before each scheduled loan closing date, with respect to any nonCMBS ABS to be pledged as security for a TALF loan, the TALF Agent:

- must submit to the Custodian:
 - preliminary or final Offering Materials (except in the case of SBA Pool Certificates), if not previously delivered as described above;
 - except in the case of ABS that are (or all of whose underlying credit exposures are) fully guaranteed as to principal and interest by the full faith and credit of the U.S. government:
 - a signed report, addressed to the FRBNY, from a nationally recognized independent accounting firm that is registered with the Public Company Accounting Oversight Board, with respect to certain eligibility criteria of the ABS (an Auditor Attestation); and
 - an Indemnity Undertaking by the ABS's sponsor (and, if the sponsor is a special purpose vehicle, the sponsor's direct or indirect ultimate parent); and
 - in the case of any SBA Pool Certificate, an undertaking (Pool Assembler Undertaking) by an SBA-approved "pool assembler" (and, if the pool assembler is a special purpose vehicle, the pool assembler's direct or indirect ultimate parent), containing, among other things, a representation that the ABS constitute eligible collateral under the TALF "at all times."
 - If any SBA Pool Certificate fails to constitute TALF-eligible collateral for any reason, even after the SBA Pool Certificate is no longer collateral for a TALF loan (e.g., following Collateral Surrender by the related borrower), the signatories to the Pool Assembler Undertaking will be required to purchase the SBA Pool Certificate from the FRBNY (or, if applicable, from its TALF special purpose vehicle affiliate) immediately upon demand, at the purchase price determined pursuant to the Pool Assembler Undertaking.
 - The pool assembler may be either the entity that assembled the pool or the pool assembler from which the borrower is to acquire the SBA Pool Certificate on the loan closing date. For pools assembled jointly between two or more pool

assemblers, any one of them may execute the undertaking.

- in the case of New Acquisition Collateral, must submit to the Custodian a Sales Confirmation that:
 - is generated by the brokerdealer through which the borrower is to purchase the ABS; and
 - includes the price to be paid by the borrower for the ABS; and
- may submit to the Custodian, in the case of New Acquisition Collateral to be issued on the loan closing date, a revised loan request reflecting any reductions in the amount of the New Acquisition Collateral that the TALF Agent's borrowers expect to be able to deliver on the loan closing date as a result of the actual allocations of that New Acquisition Collateral by the related underwriters.

3rd Business Day before Loan Closing Date. On the third business day before each scheduled loan closing date:

- not later than 12:00 noon, each TALF Agent that has submitted a loan request with respect to New Acquisition Collateral other than SBA Pool Certificates must deliver final Offering Materials to the Custodian, if they have not been previously delivered as described above (and, if the New Acquisition Collateral is Newly Issued CMBS, the TALF Agent is required to cause the related AUP Report (Industry) (and, in accordance with the TALF Standing Loan Facility Procedures, the related AUP Report (TALF)) to be submitted to the FRBNY and the Custodian as soon as reasonably practicable thereafter);
- not later than 5:00 p.m., the Custodian must deliver to the FRBNY a schedule showing, for each borrower and each requested loan, the eligible ABS that the borrower intends to deliver as collateral for its loan. The schedule must include, at a minimum:
 - CUSIPs or other unique identifying numbers of each ABS to be pledged as collateral;
 - a description of the ABS;
 - the principal amount of the ABS;
 - the "Haircut Amount" (i.e., the dollar amount of the related haircut percentage specified in the TALF Standing Loan Facility Procedures) applicable to each ABS as of that business day; and
 - each ABS's "Collateral Value" as of that business day (i.e., the product of (i) the

Advance Rate with respect to that ABS and (ii) the ABS's Market Value), where:

- “haircut percentage” means:
 - o for any class of eligible collateral other than Legacy CMBS, the haircut percentage specified in the TALF Standing Loan Facility Procedures as applicable to that class; and
 - o for any Legacy CMBS, (i) the applicable “base dollar haircut” percentage set forth in the TALF Standing Loan Facility Procedures divided by (ii) the Legacy CMBS's Market Price;
- “Advance Rate” with respect to any ABS means, at any time of determination, 100 percent minus the haircut percentage, at that time, with respect to the class of collateral to which that ABS belongs (or, in the case of a Legacy CMBS, the haircut percentage, at that time, with respect to that specific Legacy CMBS);
- “Market Value” means, at any time, the product of (i) the ABS's then outstanding principal amount and (ii) its Market Price at that time; and
- “Market Price” means (with certain exceptions set forth in the MLSA), at any time, the “market price” of the ABS, expressed as a percentage of the ABS's outstanding principal amount and:
 - o determined by the Custodian, in the case of New Acquisition Collateral issued on the loan closing date, to be the price to be paid by the borrower as set forth in the related Sales Confirmation and reported to the Custodian by the borrower's TALF Agent;
 - o other than (i) in the case of Legacy CMBS or (ii) as described in the preceding bullet point, determined by the Custodian on the basis of the pricing information reported to the Custodian by customary pricing services (other than pricing information the Custodian determines in good faith is representative only of market conditions prevailing more than four weeks before the date on which the Custodian receives any such report), but not to exceed 100 percent of the ABS's principal amount unless a

Required Monthly Amortization Amount applies to the ABS, and in no event to exceed 110 percent of the ABS's principal amount; or

- o equal to, in the case of a Legacy CMBS, the least of (i) the price (as a percentage of the Legacy CMBS's outstanding principal amount) paid for it by the borrower and set forth in the related Sales Confirmation, (ii) the market price of the Legacy CMBS (as a percentage of its outstanding principal amount) as determined by the FRBNY in its sole discretion as of the applicable loan subscription date and (iii) 100 percent.

2nd Business Day before Loan Closing Date. On the second business day before the loan closing date, the FRBNY will instruct the Custodian to deliver, by 5:00 p.m. (or a later time agreed to by the Custodian and the FRBNY), to each TALF Agent that submitted a loan request for that loan closing date, a confirmation (each such notice, a Confirmation) setting forth:

- the amount of requested loans to be made to that TALF Agent's borrowers (on both an aggregate and an individual borrower basis) on the loan closing date;
- the fixed rate (for a fixedrate loan) or the applicable margin (for a floatingrate loan), as applicable, for the requested loans;
- the loan term;
- the amount and description (including CUSIP number) of the ABS that will be accepted as eligible collateral for each requested loan on the scheduled loan closing date (the Expected ABS Collateral), and the Market Value and the Collateral Value of those ABS as of the preceding business day;
- with respect to any New Acquisition Collateral, the Haircut Amount and all “Other Closing Amounts” (i.e., all amounts, if any, in respect of (i) accrued interest on the New Acquisition Collateral and (ii) the amount, if any, by which (x) the price to be paid in respect of the related principal amount exceeds (y) the related Market Value); and
- the amount of the administrative fee required to be paid with respect to each requested loan.

Loan Closing Date. On the loan closing date (or, in the case of a Final Confirmation described below, within one business day thereafter):

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- each TALF Agent must deliver to the Custodian, by 8:30 a.m.:
 - with respect to all New Acquisition Collateral (other than TALF Agent Delivered Collateral) expected to be delivered by the TALF Agent’s borrowers, funds equal to (i) the related Haircut Amount and (ii) all related Other Closing Amounts; and
 - the administrative fee with respect to each loan to be made to each of its borrowers;
- the sponsor or issuer must deliver to the FRBNY (by submission to talfreports@ny.frb.org), by 10:00 a.m., the final credit rating letters from the relevant rating agencies, if the ABS is being issued on the loan closing date;
- before the DTC settlement cutoff time, each TALF Agent must deliver the Expected ABS Collateral to the Custodian through the facilities of DTC;
- subject to the satisfaction of the conditions set forth under “*Loan Closing Conditions*,” the FRBNY will make available in the FRBNY’s master settlement account the aggregate principal amount of all loans expected to be made to the borrowers of each TALF Agent on the loan closing date;
- all Expected ABS Collateral actually received by the Custodian will be settled to the FRBNY’s master settlement account against payment for that collateral; and
- the Custodian will redeliver to each TALF Agent a revised Confirmation, reflecting all loans disbursed, and all collateral delivered and accepted, on that loan closing date (as so revised, a Final Confirmation). Each Final Confirmation will represent the definitive record (absent manifest error) of all loans made to that TALF Agent’s borrowers and all collateral pledged as security for those loans.

Procedures Subject to Change. The loan request procedures set forth above may be changed by the FRBNY from time to time, as communicated via posting to the TALF website. Once posted, any such changes will supersede the procedures set forth in the

MLSA with respect to subsequent loan subscription dates and loan closing dates.

NOTES

1. The initial version of the Master Loan and Security Agreement was released on February 18. Since that date, a number of revised versions have been released. The current and previously released versions of the Master Loan and Security Agreement are available at www.newyorkfed.org/markets/talf_docs.html. Information about the TALF in general, including related Federal Reserve Board press releases, is available at www.newyorkfed.org/markets/talf.html.
2. At the time this article was submitted for publication, the Terms and Conditions and the Frequently Asked Questions had most recently been updated on October 5. The related links can be found at www.newyorkfed.org/markets/talf_terms.html and www.newyorkfed.org/markets/talf_faq.html, respectively.
3. The MLSA defines “TALF Agent” as a financial institution that appears from time to time on the list of eligible “TALF Agents” available in the “TALF Standing Loan Facility Procedures” (i.e., the terms, conditions, procedures and other information (including the Terms and FAQs) with respect to the TALF, as published from time to time by the FRBNY and posted to the TALF website) and that, by executing and delivering to the FRBNY a “Letter of Agreement” under the MLSA, has become a party to the MLSA, individually and as agent for its applicable borrowers.
4. By its terms, the TALF is a credit facility initiated under Section 13(3) of the Federal Reserve Act, which authorizes the Federal Reserve Board to authorize a Federal Reserve Bank to initiate certain credit programs in “unusual and exigent circumstances.”
5. Current and previous forms of these documents are available at www.newyorkfed.org/markets/talf_docs.html.
6. Since April, for TALF loans secured by ABS other than CMBS, the loan subscription date and loan closing date in each month have been scheduled by the FRBNY to fall in the first half of the month. For TALF loans secured by CMBS issued before January 1, 2009 (Legacy CMBS) or Newly Issued CMBS, the loan subscription date and loan closing date in each month have been scheduled to fall in the second half of the month. References in this article to “loan subscription date” and “loan closing date” should be read accordingly, depending on the context, to account for the type of collateral securing the applicable loan.
7. The Terms and FAQs provide for a limited exception to the “origination” prohibition (but not to the “securitization” prohibition) in the case of SBA Pool Certificates and Development Company Participation Certificates.
8. In the case of a loan to be secured by ABS acquired through a brokerdealer that is also the borrower’s TALF agent for the loan (TALF Agent Delivered Collateral), the brokerdealer need not deposit the Haircut Amount and Other Closing Amounts in the FRBNY’s master settlement account. Instead, the brokerdealer is entitled to retain these amounts as partial consideration for the borrower’s purchase of the ABS.
9. A Legacy CMBS’s “Market Price” (as defined in Annex A) may not exceed 100 percent.
10. Disregarding the Required Monthly Amortization Amount, if any, included in the “Monthly Loan Interest Expense Amount” under the MLSA.
11. All timeofday references in this article are to New York time.
12. See note 4.
13. Certain collateral eligibility requirements relate to the absence of an affiliation between the TALF borrower and certain obligors under or relating to the assets that back the ABS.
14. In addition to the deliveries required by the MLSA, as described below in this Annex A, the Terms and FAQs set forth issuer/sponsor delivery requirements in connection with the FRBNY’s ABS risk assessments. At least three weeks before the applicable loan subscription date, an ABS issuer or its sponsor must provide the FRBNY with (i) all data that the issuer has provided to any “nationally recognized statistical rating organization” (NRSRO) with respect to the ABS securing a proposed TALF loan and with respect to the loans or receivables underlying the ABS and (ii) copies of waivers or consents that are to be furnished by the issuer or its sponsor to all such NRSROs to permit them to share with the FRBNY their views of the credit quality of the ABS and the underlying loans or receivables. All additional data, if any, provided to any NRSRO is to be provided to the FRBNY promptly. The Terms and FAQs further provide that in connection with performing ABS risk assessments, the FRBNY may request additional information from sponsors and issuers. Eligible small business ABS are exempt from the risk assessment delivery requirements described in this footnote.