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The Term Asset-Backed Securities Loan Facility Takes Form

Details concerning the Term Asset-Backed Securities Loan Facility ("TALF"), a leading U.S. government initiative to bring about the return of capital to the financial system, continue to emerge. In the short time since we published our recent Alert entitled "The Term Asset-Backed Securities Loan Facility in Sharper Focus" (February 23, 2009), there have been further significant developments. This Alert supplements our earlier piece by describing the most recent changes.

First announced on November 25, 2008, the TALF objectives grew significantly on February 10, 2009, when Treasury Secretary Timothy F. Geithner announced a Financial Stability Plan (the "Plan") calling for the expansion of the TALF facility up to $1 trillion for permitted investments. Updated terms and conditions and other information released thereafter provided details on which our prior Alert reported.

On March 3, 2009, the Federal Reserve Bank of New York ("FRBNY") released updated TALF information that departs from or updates the Plan in several respects. The updated information indicates (1) that all TALF loans will have a floating interest rate; (2) that borrowers will be eligible for multiple TALF loans each month; (3) that FRBNY will charge an administrative fee of 5 basis points of the loan amount on each TALF loan; and (4) that FRBNY will not employ the previously contemplated bid-auction process in allocating funds. Moreover, FRBNY explicitly noted that it anticipates that asset-backed securities ("ABS") backed by rental, commercial, and government vehicle fleet leases, and ABS backed by small ticket equipment, heavy equipment, and agricultural equipment loans and leases, will be TALF-eligible by April 2009. This is in addition to earlier indications that TALF may be expanded to include commercial mortgage-backed securities, private-label residential mortgage-backed securities, and other ABS, as well as additional funding from the Troubled Asset Relief Program ("TARP"). It appears that the intent is to cover all asset classes that have historically been funded in securitization markets. These include traditional assets such as credit cards and consumer assets and less traditional assets such as leases of a wide range of vehicles and equipment, as well as inventory finance receivables covering a wide range of assets.

Of particular significance, the updated information also contains the following points:

- it abandons the prior position that the executive compensation restrictions of Section 111 of the Emergency Economic Stabilization Act of 2008 would apply to sponsors of TALF-eligible ABS and clarifies that these executive compensation restrictions will also not apply to TALF borrowers or underwriters;

- it provides an adjusted table of haircuts and interest rates for loans secured by ABS guaranteed by the Small Business Administration ("SBA") or backed by government-guaranteed student loans that appear designed to reflect minimal credit risk on assets that benefit from government guarantees (see tables below); and
- it contains an option for borrowers to surrender the collateral to the FRBNY, in lieu of repaying the outstanding principal or interest, by delivering a Collateral Surrender and Acceptance Notice with respect to such loan by the maturity date.

As described in our prior Alert, the February announcement of TALF program details received a lukewarm reception from many observers because of concerns about how investors seeking TALF loans could be adversely affected. For instance, there was a concern that the three-year limit to the term of TALF loans would provide a significant impediment to any investor holding certain categories of eligible ABS with an expected term of longer than three years because of the need to refinance or sell the ABS or come up with other funding in order to pay off the loan. Because the TALF program as currently conceived provides the borrower with the option to surrender the collateral to FRBNY (in lieu of repaying the outstanding principal or interest) by the maturity date, the maturity mismatch issue is to some extent alleviated. Investors considering exercising the surrender right as a potential exit strategy should be careful to consider whether the pricing of the loan and the ABS adequately takes this strategy into account. Conversely, sponsors of TALF-eligible ABS may want to consider the possibility of taking advantage of the surrender option in structuring TALF-eligible tranches with a longer tenor than that of the TALF loans in order to help make them more attractive to potential investors.

Another concern appears to have been that the collateral haircuts and interest rates were not conducive to facilitating ABS transactions at pricing and yields that would attract private investors even with availability of credit under TALF. There was some view that the haircuts did not distinguish adequately between prime credits (particularly those benefiting from U.S. government guarantees) and others. There was also a sense that interest rates were at unrealistically high levels to induce sponsors to issue TALF-eligible ABS in lieu of tapping other funding sources such as guaranteed borrowings under the Term Guarantee Liquidity Program.

Interest Rate Table

Loans Secured by	**Interest Rate**
ABS Backed by Federally Guaranteed Student Loans	50 Basis Points over 1-Month LIBOR
SBA Pool Certificates	75 Basis Points over Federal Funds Target Rate
SBA Development Company Participation Certificates	50 Basis Points over 3-Year LIBOR Swap Rate
Other Eligible Fixed-Rate ABS	100 Basis Points over 3-Year LIBOR Swap Rate
Other Eligible Floating-Rate ABS	100 Basis Points over 1-Month LIBOR

Initial Collateral Haircuts

Loans Secured by	Haircut Range from shortest to latest ABS expected life
Prime retail auto lease	10% - 14%
Prime retail auto loan	6% - 10%
Subprime retail auto loan	9% - 13%
Prime credit card	5% - 8%
Subprime credit card	6% - 10%
Government-guaranteed student loans and SBA loans	5% - 6% +
Private-label student loans	8% - 14%
Auto dealer floorplan receivables	12% - 16%

The March 3 updates to TALF are helpful to investors and to sponsors of ABS by removing some of the uncertainty regarding executive compensation, auction procedures and the like. It appears that the focus will move increasingly to mechanical provisions related to funding. These are likely to include the interplay of funding requests through primary dealers with settlement obligations for the purchase of new-issue ABS to be purchased by investors with the proceeds of TARP funding. They are also likely to include closing conditions and requirements for opinions to be delivered by borrowers' counsel and by issuers' counsel for the underlying ABS. It appears that the negotiation of these issues may result in a delay of the initial subscription date from the scheduled date of March 17, 2009.