



Client Alert

Financial Markets Developments

I. Updates to the White & Case March and April TALF Client Alerts

On May 1, 2009, the Federal Reserve Bank of New York (the “**New York Fed**”) released TALF (CMBS): Frequently Asked Questions¹ (“**CMBS FAQ**”) and TALF (CMBS): Terms and Conditions² (“**CMBS Terms and Conditions**”) as additions to the Term Asset-Backed Securities Loan Facility (“**TALF**”) program. The New York Fed also updated the TALF Program Frequently Asked Questions³ (“**FAQ**”) and the TALF Terms and Conditions on April 21, 2009 and May 1, 2009. This client alert addresses changes to the TALF program since the distribution of the White & Case TALF Client Alerts on March 16, 2009 and April 13, 2009.⁴ As noted in our prior Client Alerts, the New York Fed provides updates on the TALF program on an ongoing basis. We continue to monitor TALF developments and are happy to discuss additional TALF updates as they are published.

As described below, the New York Fed has expanded the list of permissible credit exposures underlying eligible Asset-Backed Securities (“**ABS**”) under the TALF program to include (i) insurance premium finance loans for the June subscription date and (ii) on a separate subscription schedule expected to begin in late June, commercial mortgage-backed pass-through securities (each a “**CMBS**”) issued after January 1, 2009. Conditions applicable to the additions to the TALF program are set forth below, as are certain differences in the TALF program as it is applied to CMBS. Additionally, CMBS and ABS backed by student loans and loans guaranteed by the Small Business Administration will be eligible for five-year TALF loans in addition to the standard three-year TALF loans.

II. Insurance Premium Finance Loans

Premium finance loans are now eligible as underlying credit for ABS in the TALF program so long as (i) the underlying loans are used to finance premiums for property and casualty insurance (but exclude deferred payment obligations from insurance companies), (ii) the ABS issuer owns the entire premium finance loan (no participations or beneficial ownership interests) and (iii) a back-up servicer has been designated in the event that the initial servicer of the premium finance loans resigns or is terminated.

Additionally, if the ABS backed by premium finance loans is issued by a revolving (or master) trust, ABS issuances must refinance existing ABS that mature in 2009, in amounts no greater than the maturing ABS. Alternatively, premium finance ABS may be issued from a master trust if substantially all of the underlying exposures were originated on or after January 1, 2009. The average life of premium finance ABS cannot exceed five years.



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III. Commercial Mortgage-Backed Securities

CMBS must meet specific requirements in order to be eligible underlying credit exposures under the TALF program. CMBS must (i) be US dollar-denominated, (ii) be cash (not synthetic), (iii) be issued on or after January 1, 2009 and (iv) have an average life of less than ten years. Conditions applicable to CMBS include the following: the issuer of a CMBS may not be a US agency or instrumentality or a government-sponsored enterprise. Each CMBS must be cleared through the Depository Trust Company. An interest in a CMBS must be senior to other securities which have competing interests in the shared loan pool, and holders of CMBS must be entitled to both principal and interest payments (i.e., no interest only or principal only securities). Interest rates for such CMBS must be either a fixed pass-through rate or a pass-through rate that is calculated based on the weighted average of underlying fixed mortgage rates. Additional conditions to collateral eligibility conditions with respect to qualifying assets, pooling and servicing agreements and certain ratings requirements are discussed more fully below.

CMBS Ratings Requirements

Upon the related TALF loan closing date, CMBS must, without the benefit of a third-party guarantee, be rated at least the highest long-term investment grade rating category by the required number of TALF CMBS-eligible rating agencies and may not be rated below the highest investment grade rating by any TALF CMBS-eligible rating agency. The New York Fed has not yet provided a list of TALF CMBS-eligible rating agencies and the required number of TALF-eligible rating agencies that ratings must be obtained from in order to be eligible, although they will be released prior to the initial CMBS subscription date. If a CMBS is on review or watch for downgrade, it will not be eligible for the TALF program.⁵

CMBS Qualifying Assets

Assets underlying a CMBS will qualify as eligible collateral if the following conditions are met:

- **Asset Types:** Each CMBS must have an interest in a trust fund which consists of fully-funded, first-priority mortgage loans. Such mortgage loans must be current in payment when securitized. Interests in any other CMBS, securities, interest rate swap or cap instruments and hedging instruments are prohibited. However, it should be noted that if the mortgage loan ownership interest provides for principal and interest payment rights which will be senior or *pari passu* with other interests following a default, that interest will be considered a mortgage loan and not a CMBS or other security. The mortgage loans must have a fixed interest rate and cannot provide for interest-only payments during any part of its remaining life.
- **Property Types:** Mortgage loans must be secured by a mortgage or similar instrument in one or more income-generating commercial properties. Mortgages must be on a fee or leasehold interest, and all properties must be located in the United States or a US Territory.
- **Origination Dates:** Mortgage loans must have been originated on or after July 1, 2008.
- **In-Place Underwriting:** Mortgage loans must have been underwritten (or re-underwritten) recently⁶ prior to the CMBS issuance. Underwritings must be based upon (1) then-current in place, stabilized and recurring net operating income and (2) then-current property appraisals.

The New York Fed is in the process of developing the framework of required deliverables required to certify CMBS TALF-eligibility. It is anticipated that the details of the certification framework will be announced shortly.

CMBS Pooling and Servicing Agreements

The documents governing the CMBS issuance and the servicing of assets must contain the following provisions in order for the CMBS to be eligible:

- If the CMBS class has the same priority as another class from a different time-tranche, the principal distributions to both of those classes must be made on a *pro rata* basis once credit support becomes zero (whether credit support is reduced as a result of actual losses or appraisals).
 - Investors in subordinate classes to the CMBS must not have control (including approval or appointment rights) over servicing the assets once the principal balance of such subordinate class is reduced to less than 25 percent of its initial principal balance (whether such reduction was a result of actual losses or appraisals).
 - Post-securitization property appraisals will only be recognized if demand or requested by the trustee or the related mortgage loan servicer.
 - Upon the sale of a mortgage loan, the seller must represent that the improvements at each related property were in material compliance with applicable law at the time of origination of such loan.
- percentage **times** the par amount of a CMBS security purchased at or below par) in the first three years of the TALF loan, which remittance be used to reduce the principal amount of the TALF loan. The 25 percent threshold will be reduced to ten percent in the fourth year of the TALF loan and five percent in the fifth year.
- Upon the remittance of principal on a CMBS, the proportion of the remittance which equals the TALF advance rate must be immediately used to reduce the principal of the TALF loan.
 - CMBS collateral pools are expected to be diversified (loan size, geography, property type, sponsorship, etc.), but the New York Fed will consider CMBS backed by undiversified collateral on a case-by-case basis.
 - The New York Fed may choose to exclude specific loans from CMBS collateral pools up until the time of issuance. Additionally, the New York Fed reserves the right to make its own risk assessments with respect to each CMBS and reject it as loan collateral.
 - Agreements governing CMBS issuances, the servicing of assets, and the terms and conditions of underlying loans must provide for reports in sufficient detail to allow the New York Fed to monitor and evaluate its position as a secured lender.
 - A borrower under TALF whose loan is secured by CMBS may elect either a three or five-year maturity.
 - A borrower under TALF with ABS backed by a CMBS must seek the consent of the New York Fed when exercising, or refraining from exercising, voting, consent or waiver rights.
 - As of the date of this writing, the New York Fed had not yet determined whether CMBS issuers will be able to reserve prospective funding given timing concerns relating to completing CMBS issuances. If permitted, the New York Fed anticipates that issuers would be required to pay a monthly reservation fee until the issuance.

IV. CMBS Loan Terms, Haircuts and Certain Other Conditions

In general, eligible CMBS issued under the TALF program must comply with the general TALF Terms and Conditions, with certain modifications:

- Five-year TALF loans having CMBS as its collateral will be subject to an excess interest cash flow diversion that will be used to repay the TALF loan. The borrower will be required to remit to the New York Fed the amount of interest received in excess of 25 percent of the haircut amount (i.e. the haircut

V. Interest

CMBS will bear interest at the following rates:

CMBS Collateral		
Asset Class	Maturity	Fixed
CMBS	three-year	100 bps over three-year LIBOR swap rate
CMBS	five-year	100 bps over five-year LIBOR swap rate

As set forth in the April 21, 2009 Terms and Conditions, three-year interest rates have been expanded to include fixed and floating rates for non-CMBS ABS. The full set of three-year interest rates for non-CMBS ABS, including the insurance premium finance ABS are as follows:

Sector	Subsector	Fixed (Weighted Average Life in Years)			Floating
		< one	one - < two	> = two	
Auto		100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Credit Card		100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Equipment		100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Floorplan		100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Premium Finance ⁷	Property and Casualty	100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Servicing Advances	Residential mortgages	100 bps over one-year LIBOR swap rate	100 bps over two-year LIBOR swap rate	100 bps over three-year LIBOR swap rate	100 bps over one-month LIBOR
Small Business	SBA loans 7(a)	N/A	N/A	N/A	Fed Funds Target Rate plus 75 bps
Small Business	SBA loans 504	N/A	N/A	50 bps over three-year LIBOR swap rate	N/A
Student Loans	Private	N/A	N/A	N/A	100 bps over one-month LIBOR
Student Loans	Gov't Guaranteed	N/A	N/A	N/A	50 bps over one-month LIBOR

With respect to the five-year ABS loans, the loan rate will be determined by type of collateral securing the loan. While not yet confirmed, the interest rates for ABS five-year loans are expected to be as follows:

Sector	Subsector	Fixed (Weighted Average Life in Years)	Floating
		> = five	
Small Business	SBA loans 7(a)	N/A	Fed Funds Target Rate plus 75 bps
Small Business	SBA loans 504	100 bps over five-year LIBOR swap rate	N/A
Student Loans	Private	N/A	100 bps over one-month LIBOR
Student Loans	Gov't Guaranteed	N/A	50 bps over one-month LIBOR

VI. Haircuts

The following haircuts will apply to TALF loans for the new insurance premium finance ABS and the CMBS collateral:

New ABS Collateral						
		ABS Average Life (years)				
Sector	Subsector	zero – one	zero – two	two – three	three – four	four – five
Premium finance ⁹	Property and Casual	5%	6%	7%	8%	9%
CMBS Collateral						
		ABS Average Life (years) ⁹				
Asset Class	≤ five	five – ten			> ten	
CMBS	15%	Haircuts will increase by 1% for each year beyond five years.			Ineligible	

VII. Additional Updates

In addition to the updates discussed above, the New York Fed has made several other updates to the TALF program in general:

- If TALF loans are issued by master trust for floorplan ABS or auto ABS, collateral is still eligible if the amount of eligible ABS issued exceeds the amount of 2009 maturities if all or substantially all of the underlying exposures were originated on or after January 1, 2009.
- Borrowers may elect to have a five-year maturity for SBA Pool Certificates, SBA Development Company Participation Certificates and ABS backed by student loans or commercial mortgages (as reflected in the Interest section above).
- CUSIPS will be obtainable for all TALF-eligible SBA Pool Certificates and Development Company Participation Certificates on the SBA Website.¹⁰
- The average life of existing ABS securities will be calculated as follows:
 - Adjusted Average Life for bullet maturities = Original Average Life – [$1 \times ((\text{Upcoming TALF Loan Closing Date} - \text{Original Closing Date of Security})/360)$]
 - Adjusted Average Life for amortizing assets = Original Average Life – [$1/2 \times ((\text{Upcoming TALF Loan Closing Date} - \text{Original Closing Date of Security})/360)$]
 - The Original Average Life is the average life reported in the final prospectus.

Please contact us with any questions you may have with respect to the TALF.

- 1 The TALF program CMBS Terms and Conditions are available at: http://www.newyorkfed.org/markets/talf_cmbs_terms.html.
- 2 The TALF program CMBS FAQ is available at: http://www.newyorkfed.org/markets/talf_cmbs_faq.html.
- 3 The TALF program FAQ is available at: http://www.newyorkfed.org/markets/talf_faq.html.
- 4 The White & Case March 2009 Client Alert is available at: http://www.whitecase.com/files/upload/fileRepository/Term_Asset_Backeted_Securities_Loan_Facility.pdf and the White & Case April 2009 Client Alert is available at: <http://whitecasenews.com/ve/ZZZ9029Y71buLB8388w/VT=0/stype=dload/OID=50941319407570>
- 5 Eligibility for financing securities in the TALF program has previously been determined as of the TALF loan closing date. The language in the “Current Ratings” section of the the CMBS Terms and Conditions, however, is slightly ambiguous. We are seeking confirmation from the New York Fed that (i) the long-term Investment Grade rating requirement and (ii) the requirement that the CMBS not be on review or watch for downgrade must both be met only on the TALF loan closing date and not on an ongoing basis in order to retain eligibility.
- 6 The CMBS Terms and Conditions do not offer guidance on what “recently” means.
- 7 Effective as of the June 2009 non-CMBS TALF Subscription.
- 8 Effective in the June 2009 non-CMBS TALF Subscription.
- 9 Average life of a CMBS is the remainder of the original weighted average life. The original weighted average life is determined by the Issuer’s industry-standard assumptions.
- 10 The CUSIPS will be available at: http://www.sba.gov/aboutsba/sbaprograms/elending/TALF_ELIGIBLE_SECURITIES.html.

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