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Legal Update

TALF 2020 Update: Federal Reserve Bank of New York Releases FAQs and Revised Term Sheet

On May 12, 2020, the Federal Reserve Bank of New York ("FRBNY" or the "Fed") issued new Frequently Asked Questions[1] and a revised term sheet[2] in connection with the Term Asset-Backed Securities Loan Facility ("TALF 2020"). This Legal Update summarizes the FAQs and the revised term sheet, highlighting key changes and noting where further information or materials may be forthcoming from the Fed.

Key Highlights

- The revised term sheet and FAQs clarified that investment funds may be eligible borrowers;
- The Fed will provide monthly public disclosures identifying TALF borrowers, their "Material Investors" (i.e., any direct or indirect owner of 10% or more of any outstanding class of securities of such borrowers), amounts borrowed, interest rates and other information;
- TALF borrowers must certify that they are unable to secure adequate credit accommodations from other banking institutions;
- No new asset classes have been added; the FAQs include detailed requirements for CLOs, CMBS and other eligible assets;
- Only S&P, Moody's and Fitch are eligible rating agencies under TALF 2020;
- Collateral review, issuer certifications, auditor assurances and SBA loan documentation have not yet been detailed; and
- The operational starting date for TALF 2020 has not yet been announced, and a form of the Master Loan and Security Agreement ("MLSA") has not been provided.

Overview

TALF 2020 has been established by FRBNY pursuant to Section 13(3) of the Federal Reserve Act, and was approved by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. The program is designed to facilitate the issuance of asset-backed securities ("ABS") and support the availability of credit to households and businesses. The TALF 2020 program was initially announced on March 23, 2020, in the wake of considerable strain on the securitization markets associated with the coronavirus pandemic. A similar initiative ("Original TALF") was instituted by the Fed in 2009 to restart primary issuance in the ABS markets following the 2008 financial crisis.

Under TALF 2020, a special purpose entity ("TALF SPV") will make loans available to borrowers as described in more detail below. Any such loans will have a three-year term, be fully secured by eligible ABS and will be non-recourse to borrowers. To support this facility, the Fed has committed to lend up to $100 billion to the TALF SPV on a recourse basis, and the US Department of Treasury will make an equity investment of $10 billion in the TALF SPV from funds appropriated to the Exchange Stabilization Fund under Section 4027 of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The TALF SPV will initially make up to $100 billion of loans available. On fixed days each month, borrowers will be able to request one or more TALF loans, the proceeds of which will be disbursed to such borrowers (contingent on receipt by the TALF custodian of eligible collateral, an administration fee and margin, if applicable).

Further details on the terms applicable to all TALF loans and the process by which borrowers can access the facility will be provided in the MLSA, still to be released, to be entered into by the Fed, its custodian, and certain of its primary dealers who will act as agents ("TALF Agents") for the borrowers in administering the program. Each TALF Agent will enter into an individually negotiated agreement (each, a "Customer Agreement") with each of its TALF Borrowers further specifying the parties' roles and obligations.

GENERAL TERMS AND CONDITIONS

The Fed has not yet provided an indication as to when TALF 2020 will first become operational. The TALF SPV will not make loans under TALF 2020 after September 30, 2020 (the "TALF Termination Date"), unless such date is extended by the Board and the Department of the Treasury.

Borrowers may prepay TALF loans in whole or in part at any time. Substitution of collateral during the term of the loan is generally not permitted. Under the revised term sheet and FAQs, TALF borrowers will be required to certify as to their eligibility to participate in the program (as further discussed below), and will be subject to the conflicts of interest requirements of section 4019 of the CARES Act, which prohibits certain federal government affiliations.

During the operation of TALF 2020, the Fed will publicly disclose certain information on a monthly basis, including the identity of each borrower and each other participant in the facility, each Material Investor of a borrower, the amount borrowed by each borrower and corresponding interest rate paid, the types and amounts of collateral pledged for each loan, and overall costs, revenues and fees for the program. A "Material Investor" for purposes of the TALF 2020 program is a person who owns, directly or indirectly, 10% or more of any outstanding class of securities of an entity. This information was not publicly disclosed in such a manner by FRBNY in connection with the Original TALF program.

The Secretary of the Treasury and the Board may make adjustments to the terms and conditions applicable to TALF 2020, with any such changes to be announced on the Fed's website.

Borrower Eligibility

To receive funds under the TALF 2020 program, a borrower must be an eligible borrower that owns eligible collateral. As set forth in the new FAQs and term sheet, eligible borrowers include businesses[3] that:

- are created or organized in the United States or under the laws of the United States;
- have significant operations in and a majority of their employees based in the United States; and
- maintain an account relationship with a primary dealer.

CREATED OR ORGANIZED IN THE UNITED STATES

A US subsidiary or US branch or agency of a foreign bank would be considered to be created or organized in the United States or under the laws of the United States for purposes of the borrower eligibility requirements under TALF 2020. However, any borrower (or if such borrower is an investment fund, any investment manager) with a Material Investor that is a foreign government is not an eligible borrower under TALF 2020. Each borrower's Material Investors must be tracked on a continuous basis to support ongoing borrower eligibility representations and FRBNY's public disclosure identifying Material Investors.

SIGNIFICANT OPERATIONS AND MAJORITY OF EMPLOYEES IN THE UNITED STATES

The first iteration of the TALF 2020 term sheet led market participants to question whether investment funds, which typically do not have employees, could be eligible borrowers under the program. The FAQs clarify that a borrower may be an investment fund[4] so long as the related investment manager has significant operations in and a majority of its employees based in the United States. If a borrower is not an investment fund, the borrower, on a consolidated basis (i.e., together with its consolidated subsidiaries but excluding any parent company or sister affiliate) must satisfy this criteria.

The FAQs also provide non-exhaustive examples of what would constitute "significant operations in the United States," including a borrower (or investment fund manager) with one of the following:

- greater than 50% of its consolidated assets in the United States;
- greater than 50% of its annual consolidated net income generated in the United States;
- greater than 50% of its annual consolidated net operating revenues generated in the United States; or
- greater than 50% of its annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) generated in the United States.

Each of these tests will be based on the entity's most recent audited financial statements.

PRIMARY DEALER

The FAQs require an eligible borrower to be a customer of a TALF Agent and to enter into a Customer Agreement that authorizes the TALF Agent to execute the MLSA and otherwise act on behalf of the borrower in connection with the program. The MLSA will provide additional details on requirements for TALF Agents and borrowers.

CERTIFICATIONS AND REPRESENTATIONS

Like other participants in CARES Act programs, borrowers under TALF 2020 will be required to provide certain representations and certifications to the Fed. Under the MLSA, each borrower will make a continuous representation that it is an eligible borrower. Each borrower will be expected to monitor its direct and indirect investors for purposes of determining Material Investors as long as its TALF loan remains outstanding, and must escalate any new Material Investors to its TALF Agent for due diligence review.

At the time of each TALF loan, the borrower must also certify that it is unable to secure adequate credit accommodations from other banking institutions. Market participants are particularly focused on this certification, asking what support will be needed by borrowers in order to be comfortable with making such certification and whether the TALF Agents will be required to perform due diligence on their customers' certifications. The FAQs clarify that borrowers do not need to determine that no credit is available, and that the certification may be based, at least in part, on unusual economic conditions in the market intended to be addressed by TALF 2020. The Fed indicates that if lending is still available, but at prices or conditions inconsistent with a normal and well-functioning market, that determination could support the borrower's certification.

Each borrower will also be required to certify that it is not insolvent, and to certify as to the conflict of interest requirements of section 4019 of the CARES Act, which prohibit certain federal government affiliations. Forms of the required certifications are not yet available and additional details on the certifications are expected at a later date.

INVESTMENT FUNDS

The FAQs also clarify that qualifying investment fund borrowers include those that are newly formed. Additionally, both investment funds that invest solely in TALF-eligible ABS and those investing in a mix of TALF-eligible ABS and other assets will be eligible.

LIMITATIONS ON UNDERLYING BORROWER ASSETS

In general, eligible collateral for a particular borrower cannot be backed by loans originated or securitized by the borrower or its affiliates. However, a borrower is not restricted from using certain of its own SBA ABS as collateral for a TALF loan, as long as the borrower has no knowledge that the loans underlying such SBA ABS were originated by it or its affiliates. The FAQs provide that a TALF borrower is also limited in the percentage of pool assets underlying its pledged ABS collateral that may constitute loans or leases made to such TALF borrower or its affiliates as underlying obligors. These pool percentage limitations are set out in the FAQs at 5% for CMBS, 10% for floorplan loan or fleet lease ABS, and 4% for CLOs.[5] [6] This limitation also applies, at 10% of the related pool, to TALF borrowers (and affiliates thereof) who manufacture, produce or sell products (or provide any services, the sale, provision or lease of which is) financed by the loans or leases in such underlying asset pool.

Eligible Collateral

ABS to be funded under TALF 2020 must meet various eligibility requirements, including their date of origination and characteristics of the underlying credit exposures. Additional eligibility criteria are meant to limit the credit risk taken by FRBNY and the Treasury through the TALF 2020 program. The following summary describes the requirements for TALF-eligible ABS collateral.

GENERAL REQUIREMENTS

The subject ABS must be US dollar-denominated cash (that is, not synthetic) ABS, and other than as specified below, must be issued on or after March 23, 2020:

- CMBS issued on or after March 23, 2020 will not be eligible; and
- SBA Pool Certificates and Development Company Participation Certificates must be issued on or after January 1, 2019.

Eligible ABS also needs to be cleared through the Depository Trust Company, and may be publicly issued or privately placed.

CREDIT RATINGS

Except with respect to SBA loans, eligible ABS must have credit ratings in the highest long-term or, if no long-term rating is available, the highest short-term investment-grade rating category from at least two eligible nationally recognized statistical rating organizations ("NRSROs"), which for purposes of TALF 2020 are currently limited to Fitch, Moody's and S&P,[7] and may not have a credit rating below the highest investment grade rating category from any eligible NRSRO. The credit ratings must not be based on a third-party guarantee and, other than with respect to CMBS, must not have been placed on review or watch for downgrade. The FAQs make clear that there will be no adverse effects on TALF borrowers should ABS already securing existing TALF loans be downgraded or place on negative watch. Any such ABS, however, may not be used as collateral for any new TALF loans until it regains its status as eligible collateral.

If a CMBS is downgraded or placed on negative watch after the TALF loan subscription date but before the settlement date, that CMBS will not be deemed ineligible on that basis, but the Fed will incorporate any related declines in the value into its valuation of the CMBS, which may affect the amount of TALF financing ultimately extended against the CMBS.

In the case of SBA ABS, no express rating is required as long as all of the underlying assets, or the ABS themselves, are fully guaranteed as to principal and interest by the full faith and credit of the US government.

PERMITTED TYPES OF UNDERLYING ASSETS

Eligible ABS must be backed by auto loans or leases, student loans, credit card receivables (both consumer and corporate), equipment loans or leases, floorplan loans, premium finance loans for property or casualty insurance, certain small business loans that are fully guaranteed by the full faith and credit of the US government, leveraged loans or commercial mortgages. The TALF requirements generally applicable to the underlying assets are discussed under the heading *"Eligible Underlying Assets"* below. For purposes of determining the eligibility of the ABS, all or substantially all of the underlying assets must be newly issued (except for CMBS), which is further discussed under the heading *"Eligible Underlying Assets—Requirements Relating to Date of Origination"* herein.

ADDITIONAL CMBS REQUIREMENTS

For CMBS, single-asset single borrower ("SASB") CMBS and commercial real estate CLOs (CRE CLOs) will not be eligible collateral. Also, the CMBS must entitle its holders to payments of principal and interest (that is, must not be an interest-only or principal-only security), and the CMBS must bear interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates. The FAQs clarify that the CMBS must not have been junior to other securities with claims on the same pool of loans, but CMBS that receive principal later (e.g., Class A-2) than the other most senior CMBS classes (e.g., Class A-1) but are otherwise *pari passu* with such other senior CMBS, qualify for TALF financing. The exclusion of "junior" CMBS refers to subordination for credit support, not to a later position in the time tranche sequence.

ADDITIONAL CLO REQUIREMENTS

Only static CLOs will be eligible collateral. The FAQs define a static CLO as a CLO that does not include a period of reinvestment of collateral proceeds, including principal or interest proceeds and proceeds on the sale of defaulted underlying leveraged loans, unless such period of reinvestment begins at least three years after the disbursement date of any TALF loan secured by the pledge of such CLO.[8]

CLO managers are permitted to sell underlying loans that have defaulted in payment of principal and interest. However, proceeds of such sales may not be reinvested and must be used to amortize the CLO. Eligible CLOs may permit loans to be sold for cash at their par amount, plus accrued interest, to a sponsor where the cash proceeds are applied to amortize the CLO.

OTHER CONSIDERATIONS

The FAQs released by the Fed include additional requirements regarding collateral eligibility that relate to the characteristics of the ABS itself and structuring of the transaction. For example, ABS retained by the sponsor of a securitization or an affiliate of such sponsor to satisfy the credit risk retention requirements are not eligible collateral under TALF 2020.

Floating rate ABS that reference LIBOR can be eligible collateral but the Fed states in the FAQs that it expects any ABS benchmarked to LIBOR to include adequate fallback language, such as that recommended by the Alternative Reference Rates Committee (the "ARRC"), or substantially similar fallback language. ABS with a zero coupon or that provide for prefunding or the retention of issuance proceeds in anticipation of purchasing additional receivables are also ineligible, as are ABS that bear interest payments that step up or step down to predetermined levels on specific dates.

Also, the FAQs specify that newly issued ABS with a redemption option exercisable prior to three years after the disbursement date of any TALF loan secured by such pledged ABS is not eligible, with the exception of redemptions pursuant to a customary clean-up call.[9] Additionally, a newly issued ABS cannot permit redemption options during any time when such ABS is owned by the New York Fed or by the TALF SPV.[10]

The FAQs note that, if eligible ABS are not issued on the same day that the investor borrows under TALF, the ABS proposed to secure a TALF loan must be acquired in arms-length secondary market transactions within 30 days prior to the relevant loan subscription date.

Eligible Underlying Assets

ELIGIBLE ASSET CATEGORIES

The revised term sheet adds no additional asset classes not already included as eligible underlying exposures in the prior term sheet; however the FAQs provide additional clarification as to the scope of these asset classes. The Fed also indicates in the FAQs that it may add additional underlying asset types in the future.

The categories of eligible asset classes include the following:

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
Auto Loans and Leases	The FAQs broadly define auto-related receivables in a manner consistent with the 2010 FAQs for the Original TALF program. Auto-related receivables include: • retail loans and leases relating to cars, light trucks, motorcycles and other recreational vehicles (i.e., RVs, boats, trailers and sports vehicles); • commercial and government fleet leases; and • commercial loans secured by vehicles and the related fleet leases of such vehicles to rental car companies. Commercial, government and rental fleet ABS may include non-fleet leases to commercial obligors in amounts not to exceed 15% of the total pool of leases to collateralize prime[11] auto retail lease ABS.

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
Student Loans	Includes private student loans.
Credit Card Receivables	Includes consumer and corporate credit card receivables.
Equipment Loans and Leases	Includes loans and leases relating to business, industrial, and farm equipment, and may include a mixture of loans and leases on a mixture of types of equipment. Examples of permissible types of equipment include, but are not limited to, agricultural, construction, or manufacturing equipment; trucks other than light trucks; smaller ticket items such as communications, office, and medical equipment, computers, copiers and security systems, and, except as described in the following sentence, equipment types that have collateralized equipment ABS in the past. Eligible equipment specifically excludes assets such as aircraft, shipping containers, ships, cell phone towers, locomotives and railcars.
Floorplan Loans[12] (Auto)	Includes revolving lines of credit used to finance dealer inventories of cars, light trucks and motorcycles. Other types of floorplan receivables may be included in an auto floorplan ABS, but only to the extent that such receivables do not exceed, in the aggregate, 5% of the total pool of receivables.
Floorplan Loans (Non-Auto)	Includes revolving lines of credit used to finance dealer inventories of items including, but not limited to, vehicles such as cars and trucks (subject to the limitations described below), recreational vehicles, motorcycles, trailers, boats and sports vehicles; agricultural, construction, or manufacturing equipment; manufactured housing; large appliances; and electronic equipment. The revolving lines of credit for non-auto floorplan ABS may be collateralized by a mixed type of inventory, including any type of inventory that has collateralized securitized floorplan loans in the past. Eligible floorplan loans for non-auto floorplan ABS may also include receivables arising under revolving or non-revolving asset-based lending facilities and loans secured by accounts receivable of the type that have been included in floorplan ABS issued in the past (ABL and AR receivables), subject to the limitations described in the next sentence. Receivables that finance cars and light trucks may be included in non-auto floorplan ABS, but only to the extent that the car and light truck receivables, together with any ABL and AR receivables, do not exceed, in the aggregate, 5% of the total pool of receivables in the securitization.

ELIGIBLE ASSET CLASSES	DEFINITIONS AND DETAILS
Premium Finance Loans	Includes loans used to finance premiums for property and casualty insurance but will not include deferred payment obligations acquired from insurance companies. The issuer of the ABS must acquire ownership of each premium finance loan in its entirety (as opposed to merely a participation or beneficial interest). The securitization must include a back-up servicer obligated to service the loans upon the resignation or termination of the initial servicer.
Certain Small Business Loans Guaranteed by the Small Business Administration	Includes loans, debentures or pools originated under the SBA's 7(a) and 504 programs, provided they are fully guaranteed as to principal and interest by the full faith and credit of the US government and meet all other TALF 2020 eligibility requirements. SBA Pool Certificates and Development Company Participation Certificates may include PPP loans in the underlying collateral pool.
Leveraged Loans (CLOs)	Eligible leveraged loans underlying CLOs comprise broadly syndicated loans to large corporate borrowers and/or middle market loans as further discussed below. Loans with interest rates tied to LIBOR are generally expected to have adequate fall back language, as further discussed below. For a CLO to be eligible, the underlying leveraged loans must be current on principal and interest, senior secured, and subject to certain additional portfolio limitations as of the subscription date, as further described below.
Commercial Mortgages	**Asset Types:** Each 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 will 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.

REQUIREMENTS RELATING TO US ORIGINATION

The prior version of the term sheet required that all or substantially all of the credit exposures underlying eligible ABS must have been originated by a "US company," defined as "a business that is created or organized in the United States or under the laws of the United States and that has significant operations in and a majority of its employees based in the United States." This standard raised a few questions from market participants, in particular as to whether US branches and agencies of foreign banks would qualify as issuers and how this standard would be applied in the context of CLOs.

The revised term sheet and FAQs provide the following clarifications regarding the US-origination requirements:

- for newly issued ABS, except CLOs, all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying asset) must be originated by US-organized entities (including US branches or agencies of foreign banks);
- for CLOs, all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying loans) must have a lead or a co-lead arranger that is a US-organized entity (including a US branch or agency of a foreign bank); and
- for all ABS, (including CLOs and CMBS), all or substantially all of the credit exposures (i.e., 95% or more of the dollar amount of the underlying assets or, for CLOs, underlying loans) must be to US-domiciled obligors (including obligors domiciled in a political subdivision or territory) or with respect to real property located in the United States or one of its territories.

REQUIREMENTS RELATING TO DATE OF ORIGINATION

The prior version of the term sheet provided that all or substantially all of the underlying credit exposures must be newly issued, except for legacy CMBS. The FAQs provide clarification as to what is meant by "newly issued," applying different requirements regarding date of origination depending on the asset type as described in the following chart. As used in the criteria relating to the date of origination, "all or substantially all" means 95% or more of the principal balance of the underlying assets.

UNDERLYING EXPOSURES	REQUIREMENTS FOR DATE OF ORIGINATION
Auto Receivables (non-revolving) and Equipment Receivables	All or substantially all underlying assets originated on or after January 1, 2019.
Auto Receivables, Credit Card Receivables, Floorplan Receivables and Premium Finance Receivables (existing revolving (or master) trust)[13]	No requirement regarding origination date of underlying assets; ABS must be issued to refinance existing ABS maturing prior to the TALF 2020 termination date and must be issued in amounts no greater than the amount of the maturing ABS.
Auto Receivables, Credit Card Receivables, Floorplan Receivables and Premium Finance Receivables (master trust established on or after March 23, 2020)	All or substantially all underlying assets originated on or after January 1, 2020.
SBA Loans	No restriction on the dates of the underlying loans or debenture as long as the loans and debentures collateralize SBA Pool Certificates and Development Company Participation Certificates that were issued on or after January 1, 2019.
Student Loans	All or substantially all of the underlying assets must have had a first disbursement date on or

UNDERLYING EXPOSURES	REQUIREMENTS FOR DATE OF ORIGINATION
	after January 1, 2019. Private student loans that are for the purpose of refinancing existing private student loans or loans guaranteed by the federal government are eligible collateral if the refinanced loan disbursement date is on or after January 1, 2019.
Leveraged Loans	All or substantially all underlying assets originated on or after January 1, 2019. Newly originated leveraged loans may include loans that have been refinanced on or after January 1, 2019.
Commercial Mortgages	No origination date requirements for underlying commercial mortgages; CMBS issued on or after March 23, 2020 are not eligible for the TALF program.

RESTRICTION ON RESECURITIZATIONS

The underlying assets may not be cash or synthetic ABS, although there is a limited exception for credit card, auto lease, floorplan and equipment lease securitizations where the underlying exposure is an "intermediate security" representing an interest in or a right to payments or cash flows from another asset pool, in which case the eligibility criteria for the underlying assets would be applied to the assets underlying the intermediate securities. Collateral certificates issued by older master trusts to new credit card ABS issuing entities, and SUBI certificates and secured notes typically used in auto lease securitizations, are covered by this exception.

ADDITIONAL REQUIREMENTS FOR CLOS

As noted above, the FAQs introduce a requirement with respect to LIBOR fallback language in the loans underlying an eligible CLO. In order for a CLO to be TALF-eligible, underlying loans with interest rates tied to LIBOR "are generally expected to have adequate fallback language." Loans generally must have either LIBOR fallback language recommended by the ARRC, or "substantially similar fallback language (as prevailing in the relevant market when the loan was originated)." The ARRC's recommendations for LIBOR fallback language for syndicated loans, which were finalized in April 2019 following a consultation commenced in September 2018, include two sets of recommended fallbacks, one based on an "amendment approach" and the other based on a "hardwired approach."

As also referenced above, the FRBNY has introduced various portfolio requirements for TALF-eligible CLOs. In addition to the requirement that each loan be senior secured and current on principal and interest, the FAQs include the following portfolio requirements:

- a maximum concentration of second-lien loans of 10%;
- a maximum concentration for debtor-in-possession (DIP) loans of 7.5%;
- a maximum concentration for covenant-lite loans[14] of 65% in the case of a broadly syndicated CLO[15] and 10% for a middle market CLO;[16] and

- a maximum single-obligor concentration of 4%.

Additionally, no more than 4% of the portfolio of a TALF-eligible CLO may consist of loans with an obligor that is either the TALF borrower or an affiliate of the TALF borrower. For purposes of this requirement, the definition of "affiliate" will be as set forth in the MLSA.

In order to be TALF-eligible, a CLO is also required to include at least one overcollateralization test redirecting cash flows to the TALF-eligible senior tranche in the event of deterioration in the underlying loan portfolio of the CLO.

MASTER TRUST CONSIDERATIONS

As noted above under *"Requirements Relating to Date of Origination,"* ABS collateralized by credit card receivables, floorplan receivables, premium finance receivables and auto receivables and issued by an existing master trust are subject to a refinancing test rather than the limitations on date of origination that apply to the underlying assets for most other categories of eligible ABS. Credit card ABS, floorplan ABS, premium finance ABS and some types of auto ABS are supported by constantly changing pools of receivables, rather than a fixed pool of amortizing assets, as is the case for the other eligible asset classes. Eligible ABS in the categories noted above that are issued by revolving master trusts established prior to March 23, 2020, must be issued to refinance existing ABS maturing prior to the TALF Termination Date, and are limited in eligibility to amounts no greater than the amount of the maturing ABS (the "refinancing test"). Such eligible ABS issued by existing master trusts is not required to be issued concurrently with the maturing ABS; however, it must be issued within the period of three months prior to the related maturity or at any time after the related maturity date (but in any event prior to the TALF Termination Date).

A sponsor is able to aggregate maturities across all of its existing master trusts and use this aggregate threshold for the refinancing test. Only funds that are actually paid to noteholders during the specified period, including funds paid to holders of variable funding notes for controlled amortization payments, will count as a maturity for purposes of the refinancing test. In contrast, funds allocated to principal accumulation accounts prior to bullet maturities but not distributed to holders cannot be included for the refinancing test.

Master trusts established on or after March 23, 2020, will be subject to the requirement that all or substantially all of the assets must have been originated on or after January 1, 2020.

The starting date for the specified period of the refinancing test is not clear under the existing FAQs. A number of possible starting dates are plausible given the existing Fed guidance: (i) January 1, 2019 (the earliest possible date that the underlying assets must be originated in other asset classes); (ii) January 1, 2020 (allowing sponsors to look to the start of the calendar year to assess maturity); or (iii) March 23, 2020 (the date of the announcement of the TALF 2020 program).

In the Original TALF FAQs, the Fed provided clear guidance that the starting date for the refinancing test was January 1, 2009, which was both the starting date for the Original TALF program and the date by which substantially all eligible assets needed to have been originated. Because those two dates do not align in TALF 2020, additional guidance is needed from the Fed to clarify this point, with industry participants hoping for the broadest possible specified period for the refinancing test.

Further clarification from the Fed may also be necessary to determine the type of issuer to which the refinancing test applies. The term "revolving (or master) trust" is used in certain provisions throughout the FAQs, while other FAQs refer only to "master trusts." The term "revolving trusts" could be interpreted to mean ABS issuers that securitize revolving pools of assets, but are not formed for the purpose of issuing more than one series of ABS. In contrast, the term "master trust" typically refers to an ABS issuer that is set up to issue multiple series of notes backed by shared collateral.

Haircuts and Calculation of Weighted Average Life

HAIRCUTS BY CATEGORY OF ELIGIBLE COLLATERAL

The haircuts by category of eligible collateral and weighted average life set forth in the revised term sheet are the same as the haircuts applicable to different categories of eligible collateral included in the prior version of the term sheet:

			ABS AVERAGE LIFE (YEARS)					
SECTOR	**SUBSECTOR**	**0-<1**	**1-<2**	**2-<3**	**3-<4**	**4-<5**	**5-<6**	**6-<7**
Auto	Prime Retail Lease	10%	11%	12%	13%	14%		
Auto	Prime Retail Loan	6%	7%	8%	9%	10%		
Auto	Subprime Retail Loan	9%	10%	11%	12%	13%		
Auto	Motorcycle/Other Recreational Vehicle	7%	8%	9%	10%	11%		
Auto	Commercial and Government Fleets	9%	10%	11%	12%	13%		
Auto	Rental Fleets	12%	13%	14%	15%	16%		
Credit Card	Prime	5%	5%	6%	7%	8%		
Credit Card	Subprime	6%	7%	8%	9%	10%		
Equipment	Loans and Leases	5%	6%	7%	8%	9%		
Floorplan	Auto	12%	13%	14%	15%	16%		
Floorplan	Non-Auto	11%	12%	13%	14%	15%		
Premium Finance	Property and Casualty	5%	6%	7%	8%	9%		
Small Business	SBA Loans	5%	5%	5%	5%	5%	6%	6%
Student Loan	Private	8%	9%	10%	11%	12%	13%	14%
Leveraged Loans	Static	20%	20%	20%	20%	20%	21%	22%
Commercial Mortgages	Legacy, Conduit	15%	15%	15%	15%	15%	16%	17%

The haircuts by category of eligible collateral and weighted average life in the revised term sheet are also the same haircuts applicable to that category of eligible collateral in the Original TALF program (although there are specific categories of eligible collateral for TALF 2020 that were not eligible collateral in the

Original TALF program (i.e., leveraged loans and commercial mortgages), and categories of eligible collateral in the Original TALF program that are not eligible for TALF 2020 (i.e., servicing advances)).

The FAQ provides that haircuts are subject to revision should market conditions materially change.

CLASSIFICATION OF ELIGIBLE COLLATERAL AS "PRIME" OR "SUBPRIME"

The haircut schedule for retail auto lease, retail auto loan and credit card ABS contemplates that the eligible collateral will either be classified as "prime" or "subprime." Although retail auto loan ABS has a separate haircut schedule for prime and subprime, the revised term sheet only includes a haircut schedule for prime retail auto lease ABS and not for subprime retail auto lease ABS. The issuer is expected to publish in the offering document for the ABS whether the deal is prime or subprime according to TALF criteria, and an absence of such disclosure will result in the deal being considered subprime. The Fed considers representations regarding classification by the issuer of an offering as prime or subprime to be a component of the issuer's representation as to the accuracy of the offering document.

Auto loan and lease ABS are considered prime if the weighted average FICO score of the receivables is 680 or greater, and, in the absence of disclosure of the weighted average FICO score, the subprime haircut schedule will apply. Other than commercial receivables in limited circumstances, receivables without a FICO score are deemed to have a FICO score of 300 for purposes of determining the weighted average FICO. If the historical cumulative net losses for commercial receivables have been the same or lower than receivables with consumer obligors and the disclosure includes such information, then commercial receivables can be excluded from the weighted average FICO calculation. However, the percentage of commercial receivables in a securitized pool may not exceed 10% under TALF 2020; the limitation of commercial receivables in a securitized pool under the Original TALF program was 15%.

Consistent with the Original TALF program, for credit card ABS to be considered prime under TALF 2020, at least 70% of the receivables must have a FICO score greater than 660, as reflected in performance data within the last 120 days. The haircut schedule for subprime credit card ABS will apply in the absence of disclosure of the weighted average FICO score.

APPLICATION OF THE HAIRCUT

The market value of eligible collateral (other than SBA ABS and CMBS) may not exceed par, and for such assets, an eligible borrower may borrow an amount equal to such market value minus the applicable haircut.

For SBA ABS with an initial market value above par, the Fed will lend an amount equal to the lesser of market value and 105% of par value, minus the applicable haircut; the borrower for SBA ABS with a market value above par will then be required to periodically prepay a portion of the loan pursuant to a calculation that adjusts for the expected reduction in the market value toward par value as the ABS mature. The maximum loan amount for CMBS will be determined by taking into account the "base value"[17] of the CMBS and the applicable haircut. The FAQs provide that the Fed may reject a TALF loan request if the requested loan amount for CMBS is greater than a stress valuation.

WEIGHTED AVERAGE LIFE LIMITATIONS

There is no minimum maturity limit for ABS that are eligible collateral. To qualify as eligible collateral, the weighted average life of auto, credit card, equipment, floorplan and premium finance ABS, cannot be greater than five years, and the weighted average life of SBA Pool Certificates and private student loan ABS cannot be greater than seven years. For other new-issue eligible collateral and legacy CMBS with average lives beyond five years, haircuts increase by one percentage point for each additional year (or portion thereof) of average life beyond five years. The FAQs specify that the weighted average life of CMBS, CLOs and Development Company Participation Certificates cannot be greater than ten years in order to qualify as eligible collateral.

CALCULATING THE AVERAGE LIFE OF ABS AT ISSUANCE

The calculation methodology for the average life of ABS under the FAQs varies by asset class and structure: (1) the average life for ABS with bullet maturities (e.g., credit card and floorplan) is the expected principal payment date; (2) the average life for auto rental fleets is the length of any revolving period plus 6 months; (3) the average life for CMBS is calculated on the basis of the current composition of the pool, the entitlement of the CMBS to make distributions, the assumption that "anticipated repayment dates" are maturity dates, a 0% Conditional Prepayment Rate, or "CPR" and the absence of future defaults (with loans in default or special servicing considered as if they had not defaulted); and (4) the average life of other categories of amortizing ABS determined based on specified prepayment assumptions and market conventions (e.g., Absolute Prepayment Speeds, or "ABS", for retail auto loans, and CPR, for equipment and leveraged loans).

The issuer is expected to publish the security's average life in the offering document for the ABS, calculated in accordance with the TALF prepayment assumptions. Further, the FAQs provide that issuers are "encouraged" to base weighted average life calculations on a loan-by-loan analysis, and that if representative pools are used instead, then the pools must "fairly and accurately" model the actual characteristics of the underlying collateral.

The Fed considers representations regarding weighted average life to maturity by the issuer in an offering document to be material to the Fed's determination of the haircuts for TALF loans and the representation as to the accuracy of the offering document contained in the issuer certification would be breached if the weighted average life calculations incorrectly apply the specified prepayment assumptions or are based on assumptions that are not representative of the actual collateral characteristics of the underlying assets.

CALCULATING THE AVERAGE LIFE OF ABS AFTER ISSUANCE

The FAQs provide a formula for determining the average life of ABS pledged as TALF collateral on a date subsequent to the date the ABS was issued that takes into account the original average life of the ABS, the time since issuance and whether the ABS has a bullet maturity or is an amortizing asset.

Other General TALF 2020 Terms

PRICING

For CLOs, the interest rate for loans under TALF 2020 will be 150 basis points over the 30-day average SOFR. Interest on TALF loans financing ABS (other than CLOs) will be payable monthly; interest on TALF loans financing CLOs will be payable quarterly rather than monthly.

For SBA Pool Certificates (7(a) loans), the interest rate will be the top of the federal funds target range plus 75 basis points and for SBA Development Company Participation Certificates (504 loans), the interest rate will be 75 basis points over the three-year fed funds overnight index swap ("OIS") rate.

For all other eligible ABS, the interest rate for loans under TALF 2020 will be 125 basis points over the two-year IOS rate for securities with a weighted average life less than two years, or 125 basis points over the three-year OIS rate for securities with a weighted average life of two years or greater.

Interest rates will be set one day prior to the related loan subscription date, and are subject to revision if market conditions change materially.

FEES

Borrowers will be required to pay the TALF SPV an administrative fee equal to 10 basis points of the loan amount. Such fee will be due and payable on the settlement date for the ABS collateral.

OTHER ITEMS FORTHCOMING

As discussed above, the Fed has not yet indicated when TALF 2020 will become operational or provided forms of the required borrower certifications. The Fed also indicated that further information will be forthcoming regarding its collateral review (which will be particularly important in determining the haircut applicable to CMBS collateral) as well as certain documentation requirements for new issue securities, including required issuer certifications, auditor assurances and SBA-specific documentation, as applicable.

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Endnotes

[1] A copy of the Fed's TALF 2020 Frequently Asked Questions can be found at https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-faq.

[2] A copy of the Fed's revised TALF 2020 term sheet can be found at https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200512a1.pdf.

[3] Under the TALF, eligible business entities or institutions include entities organized as limited liability companies, partnerships, banks, corporations and business or other non-personal trusts.

[4] The FAQs provide that an "investment fund" includes (1) any type of pooled investment vehicle that is organized as a business entity or institution, including without limitation a hedge fund, a private equity fund and a mutual fund, and (2) any type of single-investor vehicle that is organized as a business entity or institution.

[5] For purposes of the requirements described in this paragraph, the definition of "affiliate" will be as set forth in the MLSA.

[6] In the case of leases and leveraged loans, the pool balance limitation refers to the securitization value of the leases or loans in the pool.

[7] This limitation of eligible NRSROs may disproportionately impact certain classes of ABS, such as student loans, that are more typically rated by other NRSROs not currently included for purposes of TALF 2020. The FAQs state that the Fed may consider including additional NRSROs as eligible NRSROs in the future.

[8] Additionally, a static CLO may not permit reinvestment of proceeds at any time when the senior-most tranche in priority of payment (or, if the CLO structure includes multiple senior tranches that are *pari passu* in priority of payment, one or more of such senior tranches) is owned by the Fed or by the TALF SPV. This requirement may contemplate a scenario where the TALF SPV has foreclosed on the CLO collateral.

[9] "Customary clean-up call" is defined in the FAQs as a clean-up call that is exercisable by the servicer or the depositor when the remaining balance of the assets or the liabilities of the issuer is not more than 10 percent of the original balance of such assets or liabilities (or a higher percentage customarily used by the sponsor in its securitizations offered before the TALF program was established).

[10] This requirement may contemplate a scenario where the TALF SPV has foreclosed on the ABS collateral. It should be noted that the requirement for a non-call period of at least three years diverges from market standards in the CLO market, where the typical non-call period for a static CLO is not longer than one year.

[11] The criteria for classification of eligible collateral as prime or subprime is discussed under *"Haircuts and Calculation of Weighted Average Life—Classification of Eligible Collateral as 'Prime' or 'Subprime'"* herein.

[12] The categories of eligible floorplan loans are consistent with the 2010 FAQs for the Original TALF program, and contemplate that a floorplan securitization will meet the eligibility requirements for either an auto floorplan securitization or a non-auto floorplan securitization.

[13] Note that ambiguity exists as to whether the Fed intended to distinguish between master trusts and revolving trusts or treat the terms interchangeably, as discussed in more detail under *"Master Trust Considerations"* herein.

[14] The FAQs set out a detailed definition of a covenant-lite loan for purposes of TALF 2020.

[15] A broadly syndicated CLO is defined in the FAQs as a CLO that does not include leveraged loans of obligors with potential indebtedness of less than $150,000,000 and permits no more than 10 percent of the portfolio to be comprised of leveraged loans to obligors with total potential indebtedness of $150,000,000 to $250,000,000.

[16] A middle market CLO is defined in the FAQs as a CLO that is composed of leveraged loans of obligors, all or substantially all of which have potential indebtedness of less than $250,000,000 but does not permit the portfolio to include leveraged loans of obligors with EBITDA (as calculated in accordance with the underlying instrument) of less than $10,000,000.

[17] For purposes of determining the loan amounts for CMBS under TALF 2020, the "base value" is equal to the least of the purchase price on the applicable trade date, the market price as of the subscription date and a value based on the Fed's collateral review, but in no event greater than par.

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