March 9, 2009

# INVESTMENT FUNDS ALERT

## FEDERAL RESERVE ANNOUNCES NEW TERMS OF TALF

The Term Asset-Backed Securities Loan Facility (TALF) is a new government program established jointly by the Board of Governors of the Federal Reserve and the U.S. Treasury Department to increase credit availability in the market. Under TALF, U.S. entities, including most funds organized and managed in the United States that invest in securitized consumer loans will be able to borrow from the Federal Reserve Bank of New York (the "New York Fed"), based on the value of the asset-backed securities (ABS) collateral, at low interest rates subject to a limited collateral haircut.

According to a joint press release and other publications on March 3, 2009 by the Board and the Treasury, the New York Fed will make up to $200 billion in fully secured loans under TALF, with the first loans settling on March 25, 2009 based on subscriptions received by March 17, 2009. Subsequent subscriptions will be scheduled on the first Tuesday of each month. TALF will cease making new loans on December 31, 2009, unless extended by the Board.

Despite previous announcements to the contrary, TALF sponsors, underwriters and borrowers will not be subject to executive compensation limits as a result of their participation in TALF, in order to maximize the effect of TALF on the credit markets.

### THE LOANS

TALF loans are generally pre-payable, non-recourse[1], three-year term loans with monthly interest payments. The borrower can choose a fixed or floating interest rate, depending on the type of collateral, and must pay an administrative fee of five basis points and margin, if applicable, at the inception of each loan. Prepayment of the loans will be allowed. An eligible borrower can request one or more TALF loans by indicating eligible collateral, the desired amount of the loan (which must be at least $10 million) and desired interest format. In general[2], the interest rate on floating-rate loans will be 100 basis points over the one-month London Interbank Offered Rate (LIBOR), and the interest rate on fixed-rate loans will be 100 basis points over the three-year LIBOR swap rate. The New York Fed reserves the right to periodically review and adjust interest rates for new loans on a prospective basis and to reject any request for a loan, in whole or in part, in its discretion.

In order to receive the loans, the borrower must be a customer of a primary dealer that facilitates the loan. The primary dealer will then execute a Master Loan and Security Agreement (which is available at the New York Fed's Web site) on the borrower's behalf.

### ELIGIBLE COLLATERAL

To be eligible collateral for TALF ("Eligible ABS"), ABS must be issued on or after January 1, 2009, unless the ABS are SBA Pool Certificates or Development Company Participation Certificates, which must be issued on or

[1] If the borrower breaches certain of its representation and warranties or covenants, the loan under TALF may become full recourse. In additional, loans under TALF secured by ABS with maturities of less than three years will have maturities of less than three years.

[2] The interest rate spread on TALF loans backed by collateral benefiting from a government guarantee (e.g., FFELP ABS, SBA 7(a) ABS and SBA 504 ABS) will be 50 basis points. That spread is over the federal funds target rate (or the top of the federal funds target range) plus 25 basis points for SBA 7(a) ABS, over one-month LIBOR for FFELP ABS and over the three-year LIBOR swap rate for SBA 504 ABS.

after January 1, 2008 to be eligible. Eligible ABS need not be issued on the day of TALF borrowing and will include U.S. dollar-denominated cash (not synthetic)[3] ABS with all or substantially all of the exposure of the ABS to underlying U.S.-domiciled obligors. Eligible ABS for a borrower must not be backed by loans originated or securitized by that borrower or its affiliates. Underlying credit exposures must be auto loans, student loans, credit card loans or small business loans fully guaranteed by the U.S. Small Business Administration. Additionally, the underlying credit exposures must have been issuer of the first discursement must have been made by a specified date.[4] The Eligible ABS must be cleared through the Depository Trust Company and either have a credit rating in the highest long-term or short-term investment grade rating by at least two major nationally recognized statistical rating organizations or be backed by the full faith and credit of the U.S. government, depending on the type of collateral, at the time of the TALF loan. The Board and the Treasury recently stated in their joint press release that they anticipate expanding the scope of eligible collateral during the course of the TALF program.

Eligible ABS will be subject to a haircut on the value of the collateral. The haircut will vary depending on the type of Eligible ABS. The haircut varies from 5 percent for Small Business Administration loans and government-guaranteed student loans with expected lives of less than four years to 16 percent for auto floorplan loans with expected lives of up to five years. For a full schedule of haircuts, see the New York Fed’s March 3, 2009 Operations Announcements here.

## ELIGIBLE BORROWERS

Eligible borrowers will include all entities organized under U.S. laws that own Eligible ABS, even if they have non-U.S. parents, as long as they (i) are not controlled by a foreign government and (ii) are managed by an investment manager with a principal place of business in the United States and also not controlled by a foreign government. Therefore, hedge and private equity funds organized under U.S. laws and offshore funds participating through U.S. investment vehicles should be able to borrow under TALF if the above criteria are met.

## CONCLUSION

TALF could provide significant opportunities for hedge funds and private equity funds that invest in ABS. If you have any questions regarding TALF, please contact a lawyer in Akin Gump Strauss Hauer & Feld LLP’s investment funds practice (see below) or visit the New York Fed’s TALF Web site here.

## CONTACT INFORMATION

If you have any questions regarding this alert, please contact–


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|---|---|---|---|
| Mark H. Barth | mbarth@akingump.com | 212.872.1065 | New York |
| David M. Billings | dbillings@akingump.com | 44.20.7012.9620 | London |
| J.P. Bruynes | jpbruynes@akingump.com | 212.872.7457 | New York |
| James A. Deeken | jdeeken@akingump.com | 214.969.4788 | Dallas |
| Christopher M. Gorman-Evans | cgorman-evans@akingump.com | 44.20.7012.9656 | London |
| Barry Y. Greenberg | bgreenberg@akingump.com | 214.969.2707 | Dallas |
| Robert M. Griffin Jr. | bgriffin@akingump.com | 44.20.7012.9676 | London |
| Leon B. Hirth | lhirth@akingump.com | 212.872.1059 | New York |
| Ira P. Kustin | ikustin@akingump.com | 212.872.1021 | New York |
| Arina Lekhel | alekhel@akingump.com | 212.872.8018 | New York |
| Burke A. McDavid | bmcdavid@akingump.com | 212.872.1083 | New York |
| Prakash H. Mehta | pmehta@akingump.com | 202.887.4248 | Washington, D.C. |
| Lisa A. Peterson | lpeterson@akingump.com | 817.886.5070 | Dallas |
| Eliot D. Raffkind | eraffkind@akingump.com | 214.969.4667 | Dallas |
| Fadi G. Samman | fsamman@akingump.com | 202.887.4317 | Washington, D.C. |
| William L. Sturman | wsturman@akingump.com | 212.872.1035 | New York |
| Ann E. Tadajweski | atadajweski@akingump.com | 212.872.1087 | New York |
| Simon Thomas | swthomas@akingump.com | 44.20.7012.9627 | London |
| Stephen M. Vine | svine@akingump.com | 212.872.1030 | New York |


[3] The underlying exposures may not, however, include ABS with underlying exposures that are themselves cash or synthetic ABS.

[4] All or substantially all of the credit exposure underlying auto loan ABS must have been originated on or after October 1, 2007, and all or substantially all of the loans underlying student loan ABS must have had a first disbursement date of May 1, 2007 or thereafter. SBA Pool Certificates and Development Company Participation Certificates must have been issued (without respect to the date of the underlying loans), and all SBA-guaranteed credit exposures underlying other small business ABS must have been originated, on or after January 1, 2008. Credit card and auto dealer floorplan ABS must be issued to refinance ABS maturing in 2009.