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Client**Advisory**

March 12, 2009

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Proposed Addition of CMBS to TALF May Create Opportunities for Commercial Mortgage Loan Originators, Servicers, Borrowers and Investors

On March 3, the Federal Reserve launched the Term Asset-Backed Securities Loan Facility (TALF), which is intended to help consumers and small businesses obtain credit by promoting the issuance of asset-backed securities (ABS).[1] Currently, these ABS must be backed by student loans, auto loans and leases, credit card receivables and certain small business loans. However, the Treasury Department and Federal Reserve are currently analyzing the appropriate terms and conditions for ABS backed by various types of commercial mortgage loans, and it is anticipated that as early as April the TALF will be expanded to include commercial mortgage-backed securities (CMBS). The addition of CMBS to the TALF program is meant to help restart the dormant originate-to-distribute model of commercial mortgage loan securitizations and may create new opportunities for many companies, including the following:

- *Originators*, who may originate and sell new commercial mortgage loans into securitizations that include issuances of TALF-eligible CMBS
- *Servicers*, who may master service, service and sub-service newly originated and securitized commercial mortgage loans
- *Borrowers*, who may refinance existing commercial loans with newly originated loans that will back, in part, TALF-eligible CMBS, or obtain such loans for new property acquisitions
- *Investors*, who may obtain leveraged, non-recourse loans from the Federal Reserve to purchase newly issued TALF-eligible CMBS

What is the TALF?

The TALF is a program whereby, prior to December 31, 2009, the Federal Reserve Bank of New York (FRBNY), in conjunction with the Treasury Department, will lend up to $1 trillion on a non-recourse basis to purchasers of certain eligible ABS (which, as noted, may soon be expanded to include eligible CMBS). To stimulate the issuance and purchase of CMBS, the FRBNY will provide three-year[2] fixed-rate or floating-rate non-recourse loans at relatively low interest rates to purchasers of eligible CMBS. For example, assuming that all other aspects of the TALF did not change and assuming that CMBS were assigned a "haircut amount" of 10%, the TALF loans would allow a purchaser to borrow 90% of the cost of the CMBS, i.e., if an investor were to put down $10 million, the FRBNY would lend the investor $90 million to purchase a total of $100 million of CMBS.[3] Because there are no margin calls

1 See http://www.newyorkfed.org/markets/talf.html.

2 Feedback has been provided to the FRBNY that many market participants would like to see longer loan terms for CMBS-collateralized TALF loans, and the FRBNY is reportedly considering the issue.

3 The exact "haircuts" for particular types of CMBS are expected to range from approximately 5% to 14%.

or re-margining requirements, if at the end of the three-year loan term the CMBS drop in value by more than the amount of the initial investment, the investor may simply allow the FRBNY to seize the pledged collateral, thereby limiting potential losses to the amount of the initial investment. It is anticipated that these terms will make the facility attractive to many investors and will assist in restarting CMBS issuance.

The requirements for a TALF loan include that the borrower must be a U.S. company or investment fund that owns or purchases[4] eligible CMBS and has an account relationship with a primary dealer which will act as the borrower's agent with respect to all dealings with the FRBNY. Offshore funds may invest through onshore subsidiaries as long as they are not controlled by a foreign government or managed by an investment manager controlled by a foreign government. The minimum loan amount is $10 million, with interest and principal on the TALF loan payable solely out of interest and principal payments on the CMBS. The loans will be prepayable at any time and will be assignable with the consent of the FRBNY. Although the particular terms and conditions for CMBS have not yet been released, it is reasonable to expect that many of the terms will mirror those for existing ABS. To the extent that they do, such CMBS would be required to be:

- public or privately placed U.S. dollar-denominated cash (not synthetic) CMBS having a long-term credit rating of AAA[5] or its equivalent from two or more of the three major rating agencies, and lacking a long-term rating below AAA or its equivalent from any such rating agency;
- cleared through the Depository Trust Company;
- not reliant on third party guarantees for ratings and not placed on review or watch for downgrade by any major rating agency;
- originated on or after January 1, 2009, and generally backed by underlying credit exposures that were recently originated to U.S. domiciled borrowers;
- not backed by underlying credit exposures that are themselves CMBS (i.e., no resecuritizations or re-REMICs); and
- for any particular borrower, not backed by loans originated or securitized by that borrower or any of its affiliates.

How can I learn more about CMBS and the TALF?

It is expected that the Federal Reserve will release new terms and conditions for CMBS as a TALF-eligible asset class in the next few weeks. As soon as those details are announced, Katten's TARP Task Force will distribute updated client advisories and will host a webinar on the topic. Particular details about the webinar will be announced at that time. In the interim, you may review our most recent client advisory published with respect to the current TALF program, located at http://www.kattenlaw.com/federal-reserve-launches-talf-removes-executive-compensation-limits-and-revises-terms-03-06-2009/, or contact any of our TARP Task Force members for more information.

Katten's TARP Task Force

Katten Muchin Rosenman LLP's multidisciplinary TARP Task Force advises clients with respect to all aspects of TARP-related programs, including (i) the Capital Purchase Program, whereby the Treasury Department is purchasing preferred shares in certain publicly traded and privately held financial institutions, (ii) the new Capital Assistance Program providing additional capital through the purchase of convertible securities issued by financial institutions which have been subject to a stress-test, (iii) the new $500 billion to $1 trillion Public-Private Investment Fund in which the government will finance purchases of legacy assets by private sector institutions, and (iv) the new $75 billion Making Home Affordable plan to prevent avoidable foreclosures.

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4 It should be noted that the CMBS may be purchased with the proceeds of the loan, with the CMBS purchase closing on the same date as the TALF loan funding.

5 The FRBNY has also received feedback from market participants who would prefer eligible collateral to include classes that are rated lower than AAA, and the FRNBY is reportedly considering that issue.

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