

TARP Task Force

July 13, 2009

U.S. Treasury Names Asset Managers and Launches Legacy Securities Program

On July 8, the heads of the U.S. Treasury Department (UST), the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) jointly announced the launch of the Legacy Securities Program and named the nine initial asset managers for the program. The Legacy Securities Program is one-half of the Public Private Investment Program (PPIP) meant to help U.S. financial institutions cleanse their balance sheets of troubled residential and commercial mortgage-related assets. Although the PPIP was originally meant to be a \$500 billion to \$1 trillion program targeting both loans and securities, the Legacy Loans Program to be run by the FDIC has been put on indefinite hold, and UST will now initially only contribute \$30 billion to the Legacy Securities Program.

Following are the nine initial asset managers (Asset Managers) for the Public Private Investment Funds to be formed with equity contributions and debt financing from UST (in alphabetical order):

- AllianceBernstein, LP and its sub-advisors Greenfield Partners, LLC and Rialto Capital Management, LLC
- Angelo, Gordon & Co., L.P. and GE Capital Real Estate
- BlackRock, Inc.
- Invesco Ltd.
- Marathon Asset Management, L.P.
- Oaktree Capital Management, L.P.
- RLJ Western Asset Management, L.P.
- The TCW Group, Inc.
- Wellington Management Company, LLP

The following is a summary of the terms of the Legacy Securities Program, including the provisions of the equity and debt term sheets, conflict of interest rules, and legacy securities FAQs published by UST on July 8.¹

General Program Description

Partnership/Private Vehicles. Investors will participate in PPIP by purchasing interests in "Private Vehicles."² Each Asset Manager will form a Delaware limited partnership (Partnership) between it, as general partner, and UST and each related Private Vehicle, as

¹ For the equity and debt term sheets, see http://www.financialstability.gov/docs/S-PPIP_LOI_Term-Sheets.pdf. For the conflict of interest rules, see http://www.financialstability.gov/docs/PPIP_Conflict-of-Interest-Rules.pdf. For the Legacy Securities FAQs, see http://www.treas.gov/press/releases/reports/legacy_securities_faqs.pdf.

² Although the name "Private Vehicle" may seem to suggest a vehicle whose securities are unregistered, the interests of Private Vehicles may in fact be publicly offered, and Private Vehicles may or may not be formed specifically for the purpose of participating in PPIP.

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limited partners. Offshore investors may participate through a feeder vehicle (which will also constitute a Private Vehicle) that invests in a domestically formed Private Vehicle. The offering materials and governing documents of Private Vehicles, and any side letters, are subject to UST review and approval, and all investors in Private Vehicles must comply with strict anti-money laundering, know-your-customer and U.S. federal securities law screening requirements.

Eligible Assets. Each Partnership will invest in “Eligible Assets” which must be:

- commercial mortgage-backed and non-agency residential mortgage-backed securities issued prior to 2009;
- rated AAA or an equivalent rating by two or more nationally recognized statistical ratings organizations without ratings enhancement;³
- secured directly by the actual mortgage loans, leases or other assets and not other securities (which would bar re-REMIC or resecuritization securities and collateralized debt obligations);
- secured by a pool of assets, at least 90% of which must be situated in the United States; and
- purchased by a Financial Institution which is eligible to sell “Troubled Assets” under the Emergency Economic Stabilization Act of 2008 (EESA).⁴

Partnerships may also invest in “Temporary Investments” (such as cash, UST securities, and certain money market mutual funds) and derivative contracts solely to hedge interest rate exposure with respect to debt obligations. However, Partnerships specifically may not (i) invest in REMIC residual interests, (ii) hedge any credit risks, or (iii) directly or indirectly lend any Eligible Assets or any economic interest therein for any purpose (including to facilitate a short sale).

Equity Terms

Capital Commitments/Drawdowns. For each Partnership, the investors in the Private Vehicles must make capital commitments of at least \$500 million, provided that the capital commitment of each investor may not, together with its affiliates, directly or indirectly, exceed 9.9% of the related Partnership’s aggregate capital commitments. Each Asset Manager also will be required to make a capital commitment of at least \$20 million, subject to the same 9.9% limitation. UST will match the aggregate capital commitments of the Asset Manager and the investors in the Private Vehicles with its own capital contribution, provided that UST’s capital contributions will be subject to a maximum limit (currently set at \$30 billion in the aggregate for all Partnerships).

Drawdowns will be made from time to time, *pro rata* to a partner’s capital commitments, in tranches (with a minimum tranche size of 10% of capital commitments).

Partners admitted after the first closing or increasing their capital commitments will be required to make certain payments to compensate the Partnerships for existing investments, expenses and repayments of indebtedness.

The obligation to fund capital commitments will exist during the “Investment Period” from the closing date (which will occur no earlier than August 5) to the third anniversary of the closing date. During the Investment Period, proceeds distributable to the partners may be retained and re-invested by the Asset Manager.

Distributions. Distributions of proceeds, to the extent not re-invested as described above, will be made according to the priority of payments described under “Debt Terms” below, provided that any amounts otherwise distributable to any partner (other than UST) will be made (i) first, 100% to such partner until its capital contribution has been returned, and (ii) second, the “Applicable Percentage” (as defined below) to such partner and the “Warrant Percentage” (as defined below) to UST, as the holder of a contingent interest promissory note.

³ Although not stated, the requirement that the AAA rating be achieved without “ratings enhancement” appears to bar securities that are guaranteed or “wrapped” by certificate insurers, although structural or internal credit enhancement mechanisms (including senior/subordinate or excess cashflow structures) presumably would be allowed. It is unclear how other credit enhancement features, such as lender-paid primary mortgage insurance policies, letters of credit, reserve funds, or derivatives whose primary purpose is credit enhancement, might affect asset eligibility.

⁴ Eligible sellers include banks, savings associations, credit unions, security brokers or dealers or insurance companies (but not hedge funds), established and regulated under the laws of the United States or of any state, possession or territory of the United States, but excluding any central bank of, or institution owned by, a foreign government, unless the foreign government ownership is the result of (i) the default by an institution on financing extended by such foreign government or (ii) other prudential action taken by such foreign government.

The “Warrant Percentage” means the effective blended percentage equal to (i) (A) 1.5%, if the Partnership has made a “Half Turn Election” (as defined below under “Debt Terms”) or (B) 2.5%, if the Partnership has made a “Full-Turn Election” (as defined below under “Debt Terms”), in each case, of the capital commitments of the Private Vehicles and the Asset Manager (up to the amount of UST’s capital commitment) and (ii) 0%, with respect to the amount of the capital commitments of the Private Vehicles and the Asset Manager that exceeds the capital commitment of UST.

The “Applicable Percentage” means the excess of 100% over the Warrant Percentage.

Effectively, this mechanism ensures that, following the return of any partner’s capital commitment, a certain percentage of further investment proceeds will be used to pay down amounts owing to UST, as Noteholder with respect to the warrants required to be granted to it under EESA.

Fees and Expenses. The Asset Manager will be entitled to a management fee equal to (i) during the Investment Period, 0.20% per annum of UST’s capital commitment and (ii) thereafter, 0.20% of the lesser of (a) UST’s capital commitment and (b) the fair market value of UST’s interest in the Partnership. UST has not specified any rules regarding the management fees which the Asset Manager may charge investors in the Private Vehicles, other than to say that UST will not be responsible for any portion of the expenses incurred in connection with the organization of, or offering of interests in, the Private Vehicles.

Removal of Asset Manager. The Asset Manager may be removed as general partner (i) upon the election of UST at any time, with the consent of a majority of investors in the Private Vehicles or (ii) upon the election of UST following (a) certain events of cause, (b) certain “key person events” or (c) the removal of the Asset Manager or any of its affiliates as general partner of any of the Private Vehicles.

Termination. The Partnership will terminate eight years from the closing date subject to extension at the discretion of the Asset Manager with UST’s consent for two consecutive one-year periods, unless terminated earlier upon liquidation of the investments, certain bankruptcy events or certain material change of law events.

Withdrawal. Partners generally may not withdraw from the Partnership and investors in the Private Vehicles may only withdraw for legal reasons⁵ and, upon withdrawal, may only receive a note payable from distributions to the Private Vehicles. The Asset Manager and the Private Vehicles may not transfer their interests in the Partnership without UST’s consent, although investors in the Private Vehicles may transfer or pledge their interests in the Private Vehicles, subject to proper screening of the transferees by the Asset Manager.

Reports. A number of detailed monthly reports, financial statements and other information will be required to be delivered to UST and the Special Inspector General of the TARP (SIGTARP). UST and SIGTARP will also be provided with access to the books and records of the Partnership and of each Private Vehicle.

Debt Terms

Half-Turn/Full-Turn. In addition to the matching equity capital contribution of UST, each Partnership will be able to leverage itself with UST debt financing (subject to a maximum overall cap) of up to 100% of the aggregate capital commitments of all partners including UST (Full-Turn Election), or up to 50% of those commitments (Half-Turn Election.) If a Full-Turn Election is made, no additional debt is allowed and, as noted above, the Warrant Percentage will be 2.5%. If a Half-Turn Election is made, additional debt is allowed to the extent described below under “Other Debt,” and as noted above, the Warrant Percentage will be 1.5%. After making a Full-Turn Election, the Partnership may reduce its UST debt by making a Half-Turn Election, assuming certain conditions are met, but the Warrant Percentage will not be reduced. However, after making a Half-Turn Election, a Full-Turn Election will no longer be available.

⁵ UST debt financing is unavailable during any period in which investors have a right to voluntarily withdraw from the Private Vehicles.

General Debt Terms. The UST debt will mature on the earlier of (i) ten years from the closing date and (ii) the expiration, termination or dissolution of the Partnership. The facility is a multiple-draw term loan facility, and is not revolving—loans repaid or prepaid may not be re-borrowed and will reduce the maximum UST debt amount. There are no fees associated with the UST debt. Loans may be prepaid at any time without penalty with funds available for that purpose as provided under the priority of payments described below or with capital contributions made by the Partners. The loans will be secured by a perfected first priority security interest in all the investments, 100% of the equity interests of any financing subsidiaries of the Partnership, the Partnership’s rights under any permitted interest rate hedges, and all other assets of the Partnership, including proceeds.⁶ The Partnership, in the definitive documentation for the loan, will be required to make a number of customary representations, warranties and affirmative and negative covenants regarding a number of matters, including compliance with respect to EESA and the Employ American Workers Act of 2009.⁷ The UST loans will be subject to a number of usual and customary events of default.

Interest. Interest will accrue on an actual/360 basis and be payable monthly on each “Loan Payment Date,” which will be the fifth business day following the last business day of each calendar month. If a Full-Turn Election is in effect, the per annum interest rate generally will be LIBOR plus 1.00%. If a Half-Turn Election is in effect but no third party debt is outstanding, the per annum interest rate generally will be 2.00%. However, if a Half-Turn Election is in effect and third party debt is outstanding, the per annum interest rate generally will be the greater of (i) 2.00% and (ii) 100 basis points more than the weighted average interest rate of all such third party debt. During any event of default, the applicable margin will increase by 2.00%. The Partnership will be required to establish an interest reserve account and fund that account with amounts sufficient to cover three months of interest.

Other Debt. If a Half-Turn Election is in effect, subject to compliance with the “Asset Coverage Test” and “Leverage Test” described below, a Partnership can incur additional debt using private financing or the Term Asset-Backed Securities Loan Facility (TALF) of the Federal Reserve Bank of New York. Any such additional debt may be incurred through a wholly-owned financial subsidiary of the Partnership, and will only be recourse to such subsidiary.

Asset Coverage Test/Leverage Test. On any date, the “Asset Coverage Test,” and if a Half-Turn Election has been made, the “Leverage Test,” must be satisfied. The “Asset Coverage Ratio” is the percentage obtained by dividing (x) the sum of all Eligible Assets and Temporary Investments held by the borrower and any financing subsidiaries, less any accrued and unpaid interest and amounts due under all outstanding third party debt, by (y) the principal amount and accrued and unpaid interest amount on the UST debt. On any date, the “Asset Coverage Test” is satisfied if the Asset Coverage Ratio is equal to or greater than 225% if a Half-Turn Election is in effect, or 150% if a Full-Turn Election is in effect.

The “Leverage Ratio” is the ratio of total indebtedness of the Partnership and its financing subsidiaries to the Net Asset Value (total assets minus total indebtedness) of the Partnership and its financing subsidiaries. On any date, the “Leverage Test” is satisfied if (i) no loans are outstanding and the Leverage Ratio does not exceed the maximum leverage allowed under the TALF program, or (ii) loans are outstanding and the Leverage Ratio does not exceed five to one.

For purposes of calculating the Asset Coverage and Leverage Ratios, the market value of the Eligible Assets and Temporary Investments will be calculated by a “Valuation Agent” to be selected by UST, according to a methodology described in some detail in the debt term sheet.

⁶ However, if a Half-Turn Election has been made, assets may be contributed to the financing subsidiary to secure the third party debt and will not constitute collateral. In addition, the Partnership may secure permitted interest rate hedges with cash collateral which will not constitute collateral for purposes of the asset coverage and leverage ratio tests.

⁷ As of this time, there has not been any guidance published regarding application of the Employ American Workers Act to participants in the PPIP Legacy Securities Program.

Priority of Payments. On each Loan Payment Date, prior to a continuing event of default, investment proceeds on deposit in the collection account will be distributed according to the following priority of payments⁸:

- 1) First, for administrative expenses of the Partnership
- 2) Second, for payments on permitted interest rate hedges (other than early termination payments due to counterparty default)
- 3) Third, to pay the current interest and other amounts, other than principal, due to UST
- 4) Fourth, to the interest reserve account, the amount necessary, if any, to fund such account to the required amount
- 5) Fifth, if the Asset Coverage Test is not satisfied, to make principal payments up to the amount necessary to satisfy the Asset Coverage Test
- 6) Sixth, to make any early termination payments due to counterparty defaults on permitted interest rate hedges
- 7) Seventh, subject to conditions, at the option of the Asset Manager, to make investments or to optionally prepay the loans
- 8) Eighth, for distribution to the partners, beginning on the loan payment date in January 2010, as long as following this distribution, the Asset Coverage Ratio is greater than 300% (if a Half-Turn Election is in effect) or 200% (if a Full-Turn Election is in effect), an amount not to exceed in any 12-month period, the lesser of (x) 8% of the funded capital commitments and (y) the total net interest income of the Partnership for the prior 12 months
- 9) Ninth, to pay the principal amount of the UST loan, in an amount (up to the amount necessary to reduce the principal amount to zero) equal to the product of (x) the applicable “Prepayment Percentage”⁹ multiplied by (y) the amount remaining in the custodial account available to be distributed
- 10) Tenth, any remaining amounts, to the Partnership for distribution to the partners (to be allocated according to the priority described above in “Equity Terms—Distributions”) or as an optional repayment of the loans

During the continuation of any event of default, however, distributions will be made according to the following priority of payments:

- 1) First, to pay administrative expenses of the Partnership
- 2) Second, to make payments on permitted interest rate hedges (not including early termination payments due to counterparty default)
- 3) Third, for payment of all interest, principal and other amounts due to UST
- 4) Fourth, to make early termination payments on permitted interest rate hedges due to counterparty default
- 5) Fifth, any remaining amounts, to the Partnership for distribution to the partners (to be allocated according to the priority described above in “Equity Terms—Distributions”)

Other Rules

Conflicts of Interest Rules. In order to mitigate potential conflicts of interest, UST has adopted a number of provisions. First, no Partnership may buy from or sell Eligible Assets to (i) its affiliates, (ii) any other Partnership managed by a different Asset Manager, or (iii) any investor that has invested 10% or more of the aggregate private capital raised by the Partnership.¹⁰ Second, prior to the earlier of (i) the date on which a Partnership has invested 85% of its capital commitments or (ii) the one-year anniversary of the closing date, without the written consent of UST, no Asset Manager may directly or indirectly form another pooled investment fund with the primary objective of investing in Eligible Assets, other than (a) any feeder vehicle

⁸ Provided that the Asset Manager, subject to certain conditions, may withdraw funds for the purpose of making investments in additional Eligible Assets, or for the purpose of repaying the loans or making scheduled payments on permitted interest rate hedges or for partnership expenses.

⁹ The “Prepayment Percentage” for Half-Turn Elections will be 33.3% for the first three years, 50% for the fourth year, 75% for the fifth year, and 100% for the sixth through tenth years. However, for Full-Turn Elections, the “Prepayment Percentage” will be 50% for the first three years, 75% for the fourth year, and 100% for the fifth through tenth years, resulting in a faster amortization.

¹⁰ Note that this last requirement may be redundant since the equity term sheet specifies that the capital commitment of each private investor may not exceed 9.9% of the aggregate capital commitments of the private vehicles and the Asset Manager.

for the Partnership, (b) any private REIT formed to invest at least a portion of its assets directly or indirectly in the Partnership, (c) any publicly offered vehicle, or (d) any vehicle formed to invest substantially all of its assets through any program sponsored by the U.S. government or the Federal Reserve Bank of New York, including TALF.¹¹ Third, no Partnership may engage in any transactions that purport to hedge the credit risks arising from all or substantially all of the Eligible Assets of the Partnership or any other Partnership. Fourth, each Partnership must develop and implement rigorous ethics and compliance policies and procedures to manage personal conflicts of interest of fund manager employees.

Making Home Affordable Program. As part of the administration's overall financial recovery plan, UST has implemented the Making Home Affordable Program, which provides incentives to servicers and trustees to modify or refinance certain troubled residential mortgage loans. The Asset Manager will be required, subject to the overall objective of maximizing the value of the Partnership's investments and its fiduciary duties, to consent to reasonable requests from servicers or trustees for approval to participate in the Making Home Affordable Program or for approval to implement other reasonable loss mitigation measures. Also, subject to the same investment objective and fiduciary duties, if the Partnership acquires 100% of the securities that are backed by a pool of residential mortgage loans, the Asset Manager will be required to instruct the servicer or trustee of the securities to include that pool of residential loans in the Making Home Affordable Program.

Katten's TARP Task Force

Katten Muchin Rosenman LLP's multidisciplinary TARP Task Force advises clients on the Troubled Asset Relief Program created under the Emergency Economic Stabilization Act of 2008, including related corporate governance issues and the structuring and compliance of executive compensation arrangements. Katten's TARP Task Force also counsels clients on obtaining TALF loans to purchase asset-backed securities and commercial mortgage-backed securities, and on issuing and underwriting TALF-eligible securities. Additionally, Katten's TARP Task Force advises clients with respect to all aspects of other TARP-related programs such as (i) the Public-Private Investment Program, in which the government will finance purchases of legacy loans and securities by private sector institutions, (ii) the Capital Purchase Program, whereby UST is making investments in certain publicly traded and privately held financial institutions, (iii) the Capital Assistance Program that is providing additional capital in the form of purchase of convertible securities to financial institutions which have been subject to a stress-test, and (iv) the Making Home Affordable plan that is intended to prevent avoidable residential foreclosures.

¹¹ An Asset Manager may, however, continue to manage an already existing fund that would otherwise not be permitted, that is disclosed in writing to UST prior to the closing date.

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