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Federal Reserve Releases Updated Term Asset-Backed Securities Loan Facility (TALF) Term Sheet

Updates and FAQs further expand the scope of the program and provide additional clarity regarding eligibility criteria and program requirements.

On May 12, 2020, the Federal Reserve released an updated term sheet and FAQs, providing further details about its previously announced TALF program (see Latham's March 30 *Client Alert* and April 10 *Client Alert*, which outline the previous TALF releases). The revised terms (see the Federal Reserve's Term Sheet and FAQS) include greater clarity on how the TALF program will work, which entities qualify as eligible borrowers, what forms of ABS are eligible, and further information regarding specific qualifying underlying asset classes. The date the TALF program will commence lending and the form of Master Loan and Security Agreement to be used by the program will follow from the Federal Reserve.

Some highlights from the release include:

- Eligible borrowers must be US businesses that (a) are created or organized in the US or under the laws of the US; (b) have significant operations in and a majority of their employees based in the US;[1] and (c) maintain an account relationship with a TALF Agent (as further defined in the FAQs). A US subsidiary or a US branch or agency of a foreign bank may also be an eligible borrower if it otherwise satisfies the relevant eligibility criteria. Note that a US business that has a Material Investor (any person who owns, directly or indirectly, 10% or more of any outstanding class of securities of the entity) that is a foreign government (or any investment fund the investment manager of which has a Material Investor that is a foreign government) will not be an eligible borrower.[2]

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1 The FAQs note that "significant operations and a majority of its employees based in the United States" means that the borrower, on a consolidated basis, must have significant operations in and a majority of its employees based in the United States. For a borrower organized as an investment fund, the investment manager must have significant operations in and a majority of its employees based in the United States.

2 Note that the FAQs state that the Federal Reserve will publicly disclose certain information regarding the TALF participants on a monthly basis, including information identifying each borrower and other participant in the facility, information identifying each Material Investor of a borrower, the amount borrowed by each borrower, the interest rate paid by each borrower, the types and amounts of ABS collateral pledged by each borrower, and the overall costs, revenue, and other fees for the facility.

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- Borrowers will need to certify that they are unable to secure adequate credit accommodations from other banking institutions (i.e., that although other lending options may be available, the available pricing or conditions are inconsistent with a normal, well-functioning market).

- At present, only S&P Global Ratings, Moody's Investors Service Inc., and Fitch Ratings, Inc. are considered eligible NRSROs under the TALF.

- Additional information regarding the TALF program's applicability to collateralized loan obligations (CLOs), including:

  - CLOs are still required to be static pool CLOs.

  - Details regarding portfolio criteria, including certain concentration limitations (*i.e.*, 10% second lien loans, 7.5% DIP loans, 4% single underlying obligor and 65% covenant lite loan (for broadly syndicated CLOs), and 10% covenant lite loan (for middle market CLOs)) and a requirement that all or substantially all of the assets are arranged by a lead or co-lead arranger that is a US-organized entity (including a US branch or agency of a foreign bank) and made to US-domiciled obligors.

  - All or substantially all of the leveraged loans underlying CLOs must have been originated on or after January 1, 2019. Newly originated leveraged loans may include loans that have been refinanced on or after January 1, 2019.

  - Loans with interest rates tied to LIBOR are generally required to have adequate fallback language (including fallback language recommended by the Alternative Reference Rates Committee or substantially similar fallback language as prevailing in the relevant market when the loan was originated).

Pursuant to the FAQs, the Federal Reserve will publish a Master Loan and Security Agreement, which will provide further details on the program's terms. The exact start date for the program has yet to be confirmed.

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