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MEMORANDUM

DATE: June 12, 2009

TO: Finance Group Clients
Hedge Fund Group Clients

COPY TO: Finance Group
Hedge Fund Group
Private Equity Partners

FROM: Alyson B. Stewart

SUBJECT: Update on the Federal Reserve Bank of New York Term Asset-Backed Securities Loan Facility¹

We previously provided you with an initial summary on the Federal Reserve Bank of New York Term Asset-Backed Securities Loan Facility (the “TALF”) based on publications made available by the Federal Reserve Bank of New York (the “FRBNY”) for the March TALF subscription. This memo provides an updated summary of the TALF program and information regarding the March, April and May TALF subscriptions.

I. Overview

In November 2008, the Federal Reserve Board established the TALF to provide \$200 billion in non-recourse financing by the FRBNY to eligible borrowers owning eligible asset-backed securities (“ABS”). On February 10, 2009, the Treasury announced that, under the Financial Stability Plan, the TALF would be expanded to provide up to \$1 trillion in financing.

On May 1, 2009, the FRBNY announced that, beginning in June 2009, certain commercial mortgage-backed securities (“CMBS”) would be eligible for TALF funding. As discussed below, eligible CMBS will be highly-rated and of recent origin.² The FRBNY has not announced terms for

¹ Revised to reflect information and documents published by the FRBNY as of June 9, 2009.

² The FRBNY also has announced the expansion of the TALF to include so-called “legacy CMBS”, which were issued prior to January 1, 2009. For more information on the inclusion of legacy CMBS in the TALF, please refer to the following memorandum <http://www.ropesgray.com/talftoincludecertaincmbs/>.

TALF funding of investments by Public-Private Investment Funds under the Treasury's Legacy Securities program to remove so-called "toxic assets" held on bank balance sheets.

The FRBNY will cease making TALF loans on December 31, 2009, unless the program is extended by the Board of Governors.

The FRBNY maintains current versions of the Terms and Conditions ("Terms and Conditions"), frequently asked questions ("FAQs"), Master Loan and Security Agreement ("MLSA") and other documents relating to the TALF at <http://www.newyorkfed.org/markets/talf.html> (the "TALF Website"). The TALF is a work in progress, and the FRBNY has the right to change the terms and procedures relating to the TALF. We will continue to monitor developments and provide updates as information becomes available and we develop experience in this area. Please consult the TALF Website for additional information.

II. Borrowers Under the TALF

A. Eligibility Criteria

Each eligible borrower must, for the duration of the TALF loan,³ be (a) a company organized in the United States that conducts significant operations or activities in the United States, (b) an investment fund⁴ organized in the United States and managed by an investment manager with its principal place of business in the United States, (c) a U.S. insured depository institution or (d) a qualifying branch or agency of a foreign bank. An eligible borrower may be a newly-formed company and may have a non-U.S. parent company, but in the case of any entity of the type described in clause (a) or (b), it may not be controlled by, or managed by an investment manager that is controlled by, a foreign government. In addition, an eligible borrower must maintain a relationship with a primary dealer, as described in Section III, below.

For purposes of determining a borrower's eligibility, the FRBNY has said that it will consider an entity to be controlled by a foreign government if, among other things, a foreign government owns, controls, or holds the power to vote 25% or more of a class of voting securities, or total equity, of such entity.

As discussed in Section V, below, if a borrower fails to meet the eligibility criteria at any time it has a TALF loan outstanding, the FRBNY will have full recourse against the borrower for such loan, and the interest rate on the loan will increase by 200 basis points. Borrowers, and investors in borrower entities, should take steps to ensure that the eligibility criteria will be met continuously during the relevant period.

³ A borrower's eligibility is determined based on the eligibility criteria effective at the time the TALF loan is made.

⁴ For purposes of borrower eligibility, an investment fund is a pooled investment vehicle, a private equity fund, a mutual fund or other vehicle that invests primarily or exclusively in eligible collateral and borrows under the TALF.

The FRBNY has developed a pre-certification process for a subset of potential TALF borrowers that are “top-tier” U.S. financial entities.⁵ The process is designed to enhance certainty of receiving TALF funds for such entities. To be pre-certified, a potential borrower must satisfy the following conditions:

- 1) The potential borrower must be an eligible borrower;
- 2) A primary dealer must have completed its Know Your Customer procedures with respect to the potential borrower (see Section II.B);
- 3) Based on the Know Your Customer procedures, such primary dealer must have been able to form a reasonable belief that it knows the true identity of the potential borrower;
- 4) Such primary dealer must have reason to believe that the potential borrower is a reputable party that is acceptable to the primary dealer; and
- 5) The potential borrower must be (a) an industry leader in its field and/or (b) be ranked among the largest entities and/or have some of the largest operations in such field.

A request for pre-certification may be made by a primary dealer, if it believes that a potential borrower qualifies for pre-certification. Pre-certification is valid through December 31, 2009, but for subsequent loan subscriptions, the primary dealer must review the borrower for material changes in ownership or control, nature of business and whether the borrower has been subject to regulatory action, is under civil or criminal investigation or has had material negative information published about it. If a primary dealer’s review reveals any of the changes or information listed above, the primary dealer must re-escalate the borrower to the FRBNY. As always, the FRBNY reserves the right to withhold funding in exceptional cases, pre-certification notwithstanding. For more information on the pre-certification process, please refer to http://www.newyorkfed.org/markets/TALF_PreCertification_Process.pdf

Potential borrowers who are not eligible for pre-certification may still receive TALF funds. Through pre-certification, potential borrowers may receive earlier notification of issues with receiving TALF funds.

⁵ For this purpose, financial entities are limited to U.S. based depository institutions, U.S. branches or agencies of foreign banks, U.S. public pension funds, U.S. university or college endowment funds, U.S.-based hedge funds, U.S.-based private equity firms, U.S.-based mutual funds and U.S. insurance companies.

B. “Know Your Customer” and Anti-Money Laundering Disclosures

As further described in Section VIII.E, below, borrowers under the TALF will be required to submit information required under their primary dealers’ “Know Your Customer” and Anti-Money Laundering (“KYC/AML”) procedures (sometimes referred to as Customer Identification Procedures). Even in cases where borrowers have existing relationships with primary dealers, additional disclosures may be required, including disclosures regarding certain of an investment fund’s ultimate investors. Under certain circumstances, primary dealers will be required to forward such information to the FRBNY, and such information may lead to the rejection of a borrower’s loan request.

Potential borrowers should review the KYC/AML requests of each primary dealer with which they are considering entering into a Customer Agreement.

C. Audit and Inspection Rights

Under the MLSA, a borrower must provide any reports or statements that the FRBNY reasonably requests and permit the FRBNY’s designees to visit the borrower, audit and inspect the borrower’s financial records, make extracts and copies therefrom and discuss the borrower’s affairs, finances and condition with the borrower’s officers, directors, employees and accountants. The borrower’s obligation to comply with such requests is limited to the extent related to its loans, collateral and other obligations under the TALF documents. We note that the FRBNY’s inquiries could relate to the borrower’s eligibility, which may include information on the direct and indirect owners of the borrower.

D. Recipients of Funds – Application of the Employ American Workers Act

TALF borrowers are subject to the Employ American Workers Act (“EAWA”). In addition, if a Borrower is an investment fund, any entity that owns, controls or holds 25% or more of any class of voting securities, or the total equity, of such investment fund is deemed to be a recipient of funds under Section 13 of the Federal Reserve Act and, therefore, subject to the EAWA.

The EAWA heightens the requirements for hiring non-U.S. workers on H-1B Visas. Recipients of funds subject to the EAWA must make the following attestations to the U.S. Department of Labor when filing a Labor Condition Application:

- The applicant has taken good faith steps to recruit U.S. workers (defined as U.S. citizens or nationals, lawful permanent resident aliens, refugees, asylees, or other immigrants authorized to be employed in the United States (i.e., workers other than nonimmigrant aliens) using industry-wide standards and offering compensation that is at least as great as those offered to the H-1B nonimmigrant;
- The applicant has offered the job to any U.S. worker who applies and is equally or better qualified for the job that is intended for the H-1B nonimmigrant;

- The applicant has not “displaced” any U.S. worker employed within the period beginning 90 days prior to the filing of the H-1B petition and ending 90 days after its filing (a U.S. worker is displaced if the worker is laid off from a job that is essentially the equivalent of the job for which an H-1B nonimmigrant is sought); and
- The applicant will not place an H-1B worker to work for another employer unless it has inquired whether the other employer has displaced or will displace a U.S. worker within 90 days before or after the placement of the H-1B worker.

The EAWA took effect on February 17, 2009, and will remain in effect for two years. For additional information on the EAWA, please refer to <http://www.federalreserve.gov/monetarypolicy/files/eawafaq.pdf>.

III. Role of Primary Dealers

Primary dealers act as agents for eligible borrowers requesting loans under the TALF and enter into the MLSA with the FRBNY on their behalf. The FRBNY maintains a list of primary dealers at http://www.newyorkfed.org/markets/pridealers_current.html.

All lender-borrower transactions relating to TALF loans must be handled through the primary dealer representing the borrower, including all payments. Borrowers should be aware that they will bear the risk of insolvency of the primary dealer for any funds held on their behalf by a primary dealer. A borrower may work through more than one primary dealer, so long as all aspects of each individual TALF loan are handled by a single primary dealer.

Each primary dealer has its own form of Customer Agreement, which may require negotiation on a case-by-case basis. For a TALF borrower that is a newly-created special purpose vehicle (an “SPV”), primary dealers may require a guarantee (e.g. from the SPV’s parent entity). Such guarantee is a guarantee of performance of the SPV’s obligations to the primary dealer under the Customer Agreement and not a guarantee of the SPV’s performance of its obligations to the FRBNY under the MLSA.

IV. Eligible Collateral

A. Eligibility Criteria – non-CMBS

Eligible non-CMBS collateral for TALF loans, at the time the TALF loan is made, must be:

- Non-synthetic ABS rated in the highest long-term or short-term investment-grade rating category by two or more “eligible” nationally recognized statistical rating organizations

(each, an “NRSRO”)⁶ and not rated below the highest investment-grade rating category by any eligible NRSRO;⁷ or

- Non-synthetic small business loan ABS, which are, or for which all of the underlying credit exposures are, fully guaranteed as to principal and interest by the full faith and credit of the U.S. government.

In addition, the following criteria must be satisfied:

- 1) Applicable credit ratings may not be based on a third-party guarantee;
- 2) None of the ABS may be on review or watch for downgrade by any eligible NRSRO;
- 3) The ABS must not have a redemption option (other than pursuant to a customary clean-up call) unless the FRBNY has accepted such redemption option; and
- 4) All ABS must be cleared through the Depository Trust Company.

The Terms and Conditions also set forth certain criteria relating to the receivables underlying TALF eligible ABS:

- 1) 95% or more of the underlying credit exposures must be exposures to U.S.-domiciled obligors, originated by entities or institutions organized in the United States or by U.S. branches or agencies of foreign banks;
- 2) The underlying credit exposures must be auto-related loans, student loans, credit card loans, dealer floorplan loans, equipment loans, small business loans fully guaranteed as to principal and interest by the U.S. Small Business Administration, receivables related to residential mortgage servicing advances or insurance premium finance loans;
- 3) Collateral consisting of securitized loans may not have been originated or securitized by the borrower under the TALF or any affiliate of the borrower; and
- 4) The underlying credit exposures must meet certain origination date and duration criteria, as described in the Terms and Conditions and FAQs.

A borrower under the TALF must make representations to the primary dealer acting on its behalf that ABS pledged meets the eligibility criteria, but this representation is qualified as to the borrower’s knowledge based on its review of the offering materials for such collateral. As discussed in Section V, below, if such representation is false, the obligations of the Borrower to the FRBNY arising therefrom become full recourse obligations.

The sponsor of the ABS issuance will be required to have a nationally recognized certified public accounting firm registered with the Public Company Accounting Oversight Board certify that the ABS is TALF eligible on a form prescribed by the FRBNY.

⁶ As of the date of this memo, the FRBNY recognizes Fitch Ratings, Moody’s Investors Service and Standard & Poor’s as eligible NRSROs with respect to non-CMBS collateral.

⁷ If an ABS is later downgraded by a major NRSRO, it may not be used to secure a new TALF loan, but an existing loan will not be impacted by the downgrading.

In addition, any offering document for eligible ABS must include a certification, also in a form prescribed by the FRBNY, that (i) the ABS is TALF eligible and (ii) the sponsor has indemnified the FRBNY from any losses it may suffer if the above certifications are untrue.

The certification requirements described above do not apply to SBA Pool Certificates and Development Company Participation Certificates, although pool assemblers must deliver an undertaking to the FRBNY in connection with SBA Pool Certificates.

B. Eligibility Criteria – CMBS

Eligible CMBS collateral for TALF loans, at the time the TALF loan is made, must be non-synthetic CMBS issued on or after January 1, 2009, meeting the following criteria:

- 1) Rated in the highest long-term investment-grade rating category from at least two TALF CMBS-eligible rating agencies (“CMBS Rating Agencies”)⁸ to be determined by the FRBNY and not rated below the highest investment-grade rating category by any CMBS Rating Agency;
- 2) Applicable credit ratings may not be based on a third-party guarantee;
- 3) None of the CMBS may be on review or watch for downgrade by a CMBS Rating Agency;
- 4) All CMBS must be cleared through the Depository Trust Company;
- 5) The CMBS issuer may not be an agency or instrumentality of the United States or a government-sponsored enterprise;
- 6) The CMBS must not have an average life of more than ten years;
- 7) The CMBS must not have a redemption option (other than pursuant to a customary clean-up call) unless the FRBNY has accepted such redemption option; and
- 8) The agreements governing the issuance of the CMBS must contain certain additional provisions, as set forth in the Terms and Conditions.

In addition, the FRBNY requires TALF borrowers to agree not to exercise any voting, consent or waiver rights with respect to pledged CMBS without its consent.

The Terms and Conditions also set forth certain criteria relating to the underlying assets:

- 1) CMBS must represent trust fund interests in fully-funded, first priority mortgage loans originated on or after July 1, 2008, and currently in payment;
- 2) At least 95% of the underlying mortgage loans must have been originated by entities or institutions organized in the United States or by U.S. branches or agencies of foreign banks;
- 3) The properties securing the underlying mortgage loans must be income-generating commercial properties located in the United States (including its territories);
- 4) The underlying mortgage loans must be fixed-rate loans and may not permit interest-only or principal-only payments during their remaining terms; and

⁸ As of the date of this memo, the FRBNY recognizes DBRS, Inc., Fitch Ratings, Moody’s Investors Service, Realpoint LLC and Standard & Poor’s as CMBS Ratings Agencies.

- 5) The underlying mortgage loans must have been underwritten or re-underwritten close in time to the securitization, generally on the basis of then-current in-place, stabilized and recurring net operating income and then-current property appraisals.

The FRBNY has included several risk-mitigating provisions in the CMBS Terms and Conditions. A collateral manager engaged by the FRBNY will review loans to be pooled, and the FRBNY may exclude specific loans from a pool. In addition, the FRBNY may reject any CMBS from eligibility as collateral based on a risk assessment. The FRBNY has stated that it expects agreements associated with the issuance and servicing of CMBS collateral to provide for reporting sufficient for the FRBNY to perform its monitoring function.

Sponsors of newly issued CMBS will be required to have a nationally recognized certified public accounting firm registered with the Public Company Accounting Oversight Board provide assurance that the CMBS is TALF-eligible. The FRBNY is currently evaluating the form and scope of such assurance.

C. Loan Amounts and Margins

Eligible borrowers may borrow TALF loans based on the lesser of the par or market value of the collateral pledged minus an applicable margin or “haircut percentage” based on the asset class and the expected life of the collateral.

For ABS with a market value above par, the loan amount may be based on market value (up to a cap of 110% of par value) minus the applicable haircut amount, in which event the borrower will be required periodically to prepay a portion of the loan corresponding to amortization of the premium, as described in the FAQs. We expect that the obligation to pay such amortization would be a recourse obligation of the borrower.

The FRBNY has published CMBS and non-CMBS margin schedules in the Terms and Conditions and FAQs. CMBS margins range from 15-20%, and non-CMBS margins range, generally, from 5-16%, with increases for ABS with average lives beyond five years.

Each TALF loan must be at least \$10 million in principal amount, but there is no maximum requested amount. A borrower may pledge TALF-eligible collateral in its portfolio, or it may purchase TALF-eligible collateral contemporaneously with borrowing TALF funds. Non-CMBS collateral of different types may be packaged together as collateral for a loan; provided, that fixed-rate and floating-rate ABS may not be commingled for this purpose. Pledged ABS with the same CUSIP number must have a market value of at least \$10 million, except for pledged ABS that is an SBA Pool Certificate, in which case the market value of the ABS must be at least \$1 million.

D. Loan Maturity

As of the June subscriptions, the following maturities will apply:

<u>Asset Class</u>	<u>Maturity</u>
Auto Loans Credit Card Loans Equipment Loans Floorplan Loans Servicing Advance Receivables Insurance Premium Finance Loans	Three years
Student Loans SBA Pool Certificates SBA Development Company Participation Certificates CMBS	Three years or five years, at the borrower's election

E. Substitution of Collateral

Substitutions of pledged collateral will not be permitted.

F. Allocation of Payments; Collateral Default or Loss in Value

Payments of interest in respect of the collateral will be applied first to pay interest on the TALF loan and to amortize principal on the TALF loan. To the extent that interest received in respect of the collateral exceeds the interest due on the loan, the difference will be remitted to the primary dealer for the account of the borrower; provided, that in the case of five-year TALF loans, excess interest will be remitted to the borrower subject to certain caps,⁹ with the remainder applied to the TALF loan principal.

Principal payments in respect of the collateral will be prorated on the basis of the loan-to-value percentage applicable to the particular loan (e.g., if the applicable haircut percentage for the pledged ABS is 5%, then 5% of the principal payment will be disbursed to the borrower and the remainder to FRBNY); provided, that if interest expense for that month is greater than interest received on the underlying ABS, the borrower's portion of any principal payment may be used to cover the deficiency.

If the payments on the collateral are insufficient to pay the debt service requirements on the loan and the borrower does not make up the shortfall, the lender will have the right to foreclose on the collateral after a 30-day grace period. In the event that the proceeds of the foreclosure are sufficient to pay all of the obligations owing to the lender in respect of the loan, the remaining amount will be remitted to the primary dealer for the account of the borrower.

⁹ In the first three years of a TALF loan, excess interest remitted to the borrower will be capped at 25% of the haircut amount paid upon subscription, which is reduced to 10% in the fourth year and 5% in the fifth year.

If the collateral does not mature at or before the maturity date of the loan, the borrower will have the right either to repay the loan in full and recover the collateral or to arrange for the sale of the collateral at a price sufficient to repay the loan in full and recover any difference between the sale proceeds and the loan obligation. However, if the value of the collateral is insufficient at the maturity of the loan to pay the loan in full, the borrower either may surrender to the lender all of the borrower's interest in the collateral in full satisfaction of the loan (excluding any recourse obligations) or may assume full recourse liability for the loan.

G. Prepayment; Transfer of Loans

A borrower may prepay its TALF loans without premium at any time other than a window of time beginning on the 15th of each month and continuing for three business days thereafter. The borrower must deliver a prepayment notice to the FRBNY through the applicable primary dealer at least four days prior to prepayment, and the applicable Customer Agreement may impose additional timing requirements.

A borrower will be permitted to transfer all of its obligations under a loan and the associated collateral only with the consent of the FRBNY. It is unclear, however, whether a partial transfer of collateral and the related loan amount could be effected. The FRBNY may withhold or delay consent in its sole discretion and will not consent to any such transfers after December 31, 2009, unless that date is extended by the Federal Reserve Board; provided, however, that the MLSA states that such consent may be given after the termination of the TALF program if unusual or exigent circumstances exist in the financial markets.

V. **Limitations on the Non-Recourse Nature of TALF Loans**

The FRBNY (or its transferee) will have full recourse against a borrower:

- 1) For all obligations with respect to a loan, if the borrower fails to be an eligible borrower at any time the loan is outstanding, based on the eligibility criteria in effect when the loan is made;
- 2) To the extent that obligations with respect to a loan arose from the inaccuracy of certain representations, including the eligibility of the borrower, the eligibility of the collateral (to the borrower's knowledge based on its review of the offering materials), the enforceability of the loan documents against the borrower, authorization of the applicable primary dealer and the absence of adverse claims or liens on the collateral;
- 3) For the amortization of premium on loans where the value assigned to the collateral exceeds its par amount, as described above;
- 4) For all obligations with respect to a loan not paid in full at maturity, unless the borrower exercises its right to surrender collateral at maturity in satisfaction of the loan in accordance with the MLSA; and

- 5) To the extent that any interest or principal payments on the underlying ABS are erroneously credited to the borrower's account and later reversed.

In addition, during any period that a TALF loan is with recourse (other than recourse liability for amortization payments described in item 3 above), an additional 200 basis points of interest will accrue.

VI. TALF Loan Mechanics

Below is a description of typical non-CMBS operations.

Step 1: Publication of Subscription Dates. The FRBNY publishes the subscription date on the TALF Website.

Step 2: Borrowers Request Loans Through the Primary Dealers. Eligible borrowers request, through one or more primary dealers, one or more fixed-rate or floating-rate loans per month in a minimum amount of \$10 million per loan and up to the value of the pledged ABS minus the applicable margin. For ABS issuances to occur contemporaneously with a TALF borrowing, the borrower identifies the counterparty that will deliver the ABS on the loan settlement date.

Step 3: Primary Dealers Deliver Loan Request Information to the FRBNY. The primary dealers collect the eligible borrowers' requested loan amounts, interest rate elections and the CUSIPs and offering documents¹⁰ for the eligible ABS to be delivered and pledged as security for the loans. On the subscription date, each primary dealer submits such information to the FRBNY, which provides such information to its custodial agent, The Bank of New York Mellon ("BNYM"). Once submitted, a borrower's request may be adjusted only to reflect a reduction in its allocation of an ABS issue.

Step 4: Primary Dealers Deliver Additional Loan Documentation. By 5:00 p.m. on the fourth business day prior to the loan settlement date, each primary dealer delivers to BNYM sales confirmations for any collateral to be acquired by the borrower contemporaneously with the loan settlement date and final offering documents, if not previously provided. If a borrower's allocation of an ABS issue has been reduced, the applicable primary dealer may submit a revised loan request to reflect such reduction.

Step 5: BNYM Sends Eligible Collateral Schedules to the Primary Dealers. By 5:00 p.m. on the third business day prior to the loan settlement date, BNYM delivers schedules to the primary dealers of the collateral expected to be delivered, including the value thereof and the applicable haircut amount.

¹⁰ The offering documents submitted on the subscription date may be preliminary, but the final offering documents must be delivered to BNYM at least four days prior to the settlement date.

Step 6: BNYM Sends Confirmations to the Primary Dealers. Two business days before the loan settlement date, BNYM sends confirmations to the primary dealers with the borrowers' loan amounts, the interest rate applicable thereto, the collateral to be accepted, as well as the administrative fees and margins payable on the settlement date.

Step 7: Settlement of Loans. On the settlement date, the primary dealers deliver the collateral and any applicable fee or margin amounts to a settlement account at BNYM. In the event the ABS are issued on the settlement date, the relevant borrower remits payment of the margin to BNYM to receive the full purchase price. If a borrower fails to deliver pledged ABS reflected in its loan request, that portion of the loan attributable to such ABS is cancelled. In such cases, the borrower may not receive a refund of any portion of the administrative fee.

Step 8: Final Confirmations Sent by BNYM. Within one business day following the loan settlement date, BNYM sends final confirmations to the primary dealers reflecting the loans disbursed and collateral accepted.

VII. Results of the March, April and May Subscriptions

In March, primary dealers requested approximately \$4.7 billion in TALF loans backed by auto-related and credit card ABS. Subscriptions decreased to approximately \$1.7 billion in April, and again the pledged collateral consisted of auto-related and credit card ABS. In May there was a significant increase in subscriptions and an expansion of the asset classes involved. Subscriptions were approximately \$10.6 billion across the following asset classes: auto; credit card; student loan; small business; and equipment.

VIII. Loan Documentation

A. Master Loan and Security Agreement

As discussed in this memorandum, the primary document governing TALF loans is the MLSA, to which the FRBNY, BNYM and the primary dealers are party.

Note that the FRBNY has discretion to fund or reject loan requests of any given borrower. The FRBNY has stated that eligible borrowers posting eligible collateral should expect their loans to be funded. The FRBNY expects situations in which it rejects a borrower's loan request to be isolated and rare.

B. Operation Announcement

The FRBNY publishes Operation Announcements containing the subscription dates, settlement dates, administrative fees and interest rates on the TALF Website.

The administrative fee payable to the FRBNY in connection with the March, April and May subscriptions was five basis points of each loan amount, payable on the settlement date.

C. Primary Dealer Customer Agreements

Eligible borrowers must have executed a customer agreement authorizing a primary dealer to act as its agent under the TALF program. Each Customer Agreement must be evaluated separately because there is no standard form. In our experience, the process of working with primary dealers to finalize and execute Customer Agreements has been cumbersome and time-consuming. We have developed forms of the closing deliverables, which have been accepted by a number of primary dealers.

Additional risks potential borrowers should consider in evaluating Customer Agreements are whether the primary dealer is obligated to include a timely borrowing proposal in a loan request made to the FRBNY and whether the primary dealer may terminate the Customer Agreement without cause. Funding risk and primary dealer replacement risk could subject a borrower to substantial expense and, in the case where a suitable replacement primary dealer is unavailable, risk of loss of the investment.

D. Certifications and Indemnity Undertakings.

The forms for the accountants' certification described in Section IV.A, the offering document certification and indemnity described in Section IV.A and the undertaking required from pool assemblers in connection with SBA Pool Certificates are available at http://www.newyorkfed.org/markets/talf_docs.html.¹¹

E. "Know Your Customer" and Anti-Money Laundering Documentation

The FRBNY has published a Borrower Eligibility and FRBNY Due Diligence Policy ("Due Diligence Policy") at http://www.newyorkfed.org/markets/TALF_FRBNY_Due_Diligence_Policy.pdf.

The primary dealers will be required to apply their internal KYC/AML procedures to: (a) each borrower for whom it acts as agent under the TALF and (b) the "Principals" of each borrower that is (i) a newly formed entity controlled by or established for an entity that would not itself be an eligible borrower (e.g., a non-U.S. fund) or (ii) a captive investments fund or semi-captive

¹¹ No certification or indemnity is required in connection with Development Company Participation Certificates.

investment fund. A “Principal” is a borrower’s sponsor, any person with control over the borrower or any direct or indirect owner of at least 10% of any class of the borrower’s securities.

A primary dealer must report certain information to the FRBNY for any borrower or Principal who the primary dealer determines:

- Is a customer of such primary dealer who is or was subject to such primary dealer’s enhanced diligence procedures;
- Is a customer of such primary dealer who is specially monitored by such primary dealer due to certain activity;
- Is a customer against whom the primary dealer has taken action under its anti-money laundering program; or
- In the primary dealer’s discretion, to bring to the attention of FRBNY for the purposes of the Due Diligence Policy.

IX. Contacts

If you would like to discuss the TALF further, please feel free to contact any of the following people:

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