Revised as of June 23, 2009
Marked to show changes from May 19, 2009 version of Legacy CMBS Terms and Conditions

Effective June 23,~~May 19,~~ 2009

Changes from May 19 Legacy CMBS Terms and Conditions PDF

General

Qualifying Securities

Eligible collateral for a TALF loan will include U.S. dollar-denominated, cash (that is, not synthetic) commercial mortgage-backed pass-through securities (each a "CMBS") issued before January 1, 2009 as to which all of the following conditions are satisfied.

- **Assets:** The assets underlying the CMBS must satisfy the conditions described under "Qualifying Assets" below.

- **Current Ratings:** As of the TALF loan closing date, the CMBS must have a credit rating in the highest long-term investment-grade rating category from at least two TALF CMBS-eligible rating agencies and must not have a credit rating below the highest investment-grade rating category from any TALF CMBS-eligible rating agency. Eligible collateral will not include a CMBS that obtains such credit ratings based on the benefit of a third-party guarantee or a CMBS that a TALF CMBS-eligible rating agency has placed on review or watch for downgrade. See the "Frequently Asked Questions for Legacy CMBS" for further information regarding TALF CMBS-eligible rating agencies.

- **Original Seniority:** Upon issuance, the CMBS must not have been junior to other securities with claims on the same pool of loans.
- **Payment Terms:** The CMBS must entitle its holders to payments of principal and interest (that is, must not be an interest-only or principal-only security). Each CMBS must bear interest at a pass-through rate that is fixed or based on the weighted average of the underlying fixed mortgage rates.
- **Issuer:** The issuer of the CMBS must not be an agency or instrumentality of the United States or a government-sponsored enterprise.
- **Settlement:** Each CMBS must be cleared through the Depository Trust Company.

Qualifying Assets

- **Asset Types:** Each CMBS must evidence an interest in a trust fund consisting of fully-funded mortgage loans and not other CMBS, other securities or interest rate swap or cap instruments or other hedging instruments. A participation or other ownership interest in such a loan will be considered a mortgage loan and not a CMBS or other security if, following a loan default, the ownership interest is senior to or pari passu with all other interests in the same loan in right of payment of principal and interest.

- **Property Types:** The security for each mortgage loan must include (or, if payments due under the loan have been defeased, the security for the loan or its predecessor must have previously included) a mortgage or similar instrument on a fee or leasehold interest in one or more income-generating commercial properties. As of the TALF loan subscription date, at least 95 percent of the properties, by related loan principal balance, must be located in the United States or one of its territories.

Loan Terms, Haircuts and Other Conditions
The general terms and conditions of the TALF program apply to TALF loans that are secured by a CMBS described above, except as modified by the following terms and conditions:

- The New York Fed will retain the right to reject any CMBS as TALF loan collateral based on its risk assessment. In assessing risk, the New York Fed will engage a collateral monitor and will pay particular attention to CMBS mortgage pools with large historical losses, concentrations of loans that are delinquent, in special servicing or on servicer watch lists or concentrations of subordinate-priority mortgage loans, and

CMBS mortgage pools that are not diversified with respect to loan size, geography, property type, borrower sponsorship and other characteristics.

- Each TALF loan secured by a CMBS will have a three-year maturity or five-year maturity, at the election of the borrower. A three-year TALF loan will bear interest at a fixed rate per annum equal to 100 basis points over the 3-year Libor swap rate. A five-year TALF loan will bear interest at a fixed rate per annum equal to 100 basis points over the 5-year Libor swap rate.
- The TALF loan amount for each legacy CMBS will be the dollar purchase price of the CMBS less the base dollar haircut (from par) indicated below. A CMBS will not be eligible collateral for a TALF loan if its dollar purchase price is less than its base dollar haircut. The base dollar haircut for each CMBS with an average life of five years or less will be 15% of par. For CMBS with average lives beyond five years, base dollar haircuts will increase by one percentage point of par for each additional year of average life beyond five years.
- The average life of a CMBS will be the remainder of the original weighted average life determined by its issuer, with certain adjustments. See the “Frequently Asked Questions for Legacy CMBS” for further information regarding the

adjustments.

- Any remittance of principal on the CMBS must be used immediately to reduce the principal amount of the TALF loan in proportion to the original haircut. For example, if the original haircut was 15 percent, 85 percent of any remittance of principal on the CMBS must immediately be repaid to the New York Fed. In addition, for five-year TALF loans, the excess of CMBS interest and any other distributions (excluding principal distributions) over TALF loan interest payable (such amount, “net carry”) will be remitted to the TALF borrower only until such carry~~excess~~ equals 25% per annum of the haircut amount in the first three loan years, 10% in the fourth loan year, and 5% in the fifth loan year, and the remainder of such net carry equals~~excess~~ will be applied to TALF loan principal. For a three-year TALF loan, such net carry~~excess~~ will be remitted to the borrower in each loan year until it equals 30% per annum of the original haircut amount, with the remainder applied to loan principal.
- A TALF borrower must agree not to exercise or refrain from exercising any voting, consent or waiver rights under a CMBS without the consent of the New York Fed.
- The New York Fed may limit the volume of TALF loans secured by legacy CMBS,

and is considering whether to allocate such volume via an auction or other procedure.

- The New York Fed is in the process of establishing other requirements that will apply to legacy CMBS, including the requirement that TALF loans for legacy CMBS be used to fund recent secondary market transactions between unaffiliated parties that are executed on an arm's length basis. The New York Fed is also considering a process for price validation of such secondary market transactions.