

New York Fed Revises TALF Master Loan and Security Agreement

October 22, 2020

The following summarizes the key changes made to the MLSA from the May 20 posting. These changes shall be effective as of November 5, 2020:

- Removed the definitions of “Above Par Collateral” and “Required Monthly Amortization Amounts” and the references to Required Monthly Amortization Amounts in Section 4.0 as such provisions are not applicable to the Eligible Collateral given the relevant Haircut Percentage levels.
- Added new definitions of “Deferred Deficiency Amount” and “Scheduled Interest Deficiency.” A Scheduled Interest Deficiency is defined to be an amount, for any Loan Accrual Period, equal to the excess, if any, of a Monthly Loan Interest Expense Amount or Quarterly Loan Interest Expense Amount, as applicable, over the interest that has accrued on each Item of Collateral securing the applicable Loan based on the stated terms of each such Item of Collateral as of the date that such Collateral was pledged under the MLSA (whether or not paid). A Deferred Deficiency Amount is defined to be the amount (or portion thereof) of any Scheduled Interest Deficiency that the FRBNY has determined in its sole discretion to defer the payment of until a subsequent Payment Date(s) upon which the FRBNY has determined such amount will be paid in full based on the interest rate basis, interest period or other applicable scheduled interest terms of the applicable Item(s) of Collateral.
- Revised the definition of “Collateral Enforcement Event” (i) to clarify that payment obligations arising pursuant to Section 11.2(k) are considered Obligations for purposes of clause (i) of the definition of Collateral Enforcement Event and (ii) to specify that any failure to pay when due any Monthly Loan Interest Expense Amount or Quarterly Loan Interest Expense Amount resulting from a “Scheduled Interest Deficiency” shall constitute a Collateral Enforcement Event unless such amount is treated as a “Deferred Deficiency Amount”.
- Revised the definition of “Market Price” to clarify that there may be multiple Sales Confirmations submitted by a Borrower with respect to an Item of Collateral. Conforming changes have been made to Sections 3.3 and 10.1(e)(vii)(4).
- Revised the definition of “New Acquisition Collateral” to include the new definition of “New Issue SBA ABS.” With this revision, expected ABS Collateral that is SBA Collateral, where the applicable Borrower entered into a commitment to purchase such SBA Collateral in connection with its primary distribution and on a trade date that occurs both (i) on or prior to the first date on which the SBA Collateral has been or will be issued and settled into DTC and (ii) within 45 days prior to the applicable Loan

Subscription Date, shall be treated as New Acquisition Collateral for purposes of the MLSA. Conforming changes have been made to the definitions of “Sales Confirmation” and “TALF Agent Delivered Collateral” and Section 10.1(e)(vii)(2).

- Revised the definition of “Seasoned Collateral” to include Expected ABS Collateral, other than New Issue SBA ABS, that has been acquired by the applicable Borrower in an arm’s length primary or secondary market transaction within 30 days prior to the applicable Loan Subscription Date (with the date of acquisition measured from the relevant pricing or trade date) and the purchase of which settled prior to such Loan Subscription Date. Conforming changes have been made to the definition of “Sales Confirmation” and Section 10.1(e)(vii)(2).
- Removed the definition of “Student Loan Collateral” as such defined term is otherwise not used for purposes of the MLSA.
- Revised Sections 3.5(d) and 3.6(a) to clarify certain account and delivery mechanics.
- Revised Section 4.4 to incorporate the process for notice of a Scheduled Interest Deficiency and the deferral of a Scheduled Interest Deficiency, and to include the amount of any Scheduled Interest Deficiency and any Deferred Deficiency Amount in an Interest Deficiency Notice.
- Revised Section 4.5 to include any Deferred Deficiency Amount in the unpaid amount of a Monthly Interest Shortfall Amount or Quarterly Interest Shortfall Amount, as applicable, to be added to the Monthly Loan Interest Expense Amount or Quarterly Interest Expense Amounts, as applicable, for the following Loan Accrual Period.
- Revised Section 4.8 to include Scheduled Interest Deficiencies in the amounts to be calculated by the Administrator.
- Revised Section 5.3 (i) to provide that Principal Proceeds will be applied after giving effect to the application of Interest receipts in accordance with Section 4.3 and (ii) to describe how Principal Receipts should be applied to any unpaid Scheduled Interest Deficiency. Please see Section 5.3 for further details.
- Revised Section 5.5 to add a new clause (b) to address the acceleration, at Lender’s option, of all Loans of a Borrower upon the occurrence of a Collateral Enforcement Event resulting from any inaccuracy of the representations and warranties made by such Borrower in Section 10.1(d) or Section 10.1(e)(v) or a breach by such Borrower of any covenants set forth in Section 11.2(m) or 11.2(n). A conforming change has been made to the proviso to Section 14.1.
- Revised Section 11.2(k) to clarify that for purposes of such provision “promptly” shall mean no less than three Business Days and that, for the avoidance of doubt, distributions that shall be turned over to Custodian shall include any distribution that is received prior to the applicable Loan Closing Date and that is allocable to the Collateral Value of the applicable Collateral in accordance with the TALF Standing Loan Facility Procedures.

- Revised Section 17.0 to specifically provide that the limited recourse provisions of Section 17.0 shall not be applicable to Obligations with respect to a Loan to a Borrower if any of the representations and warranties made by such Borrower in Section 10.1(d) or Section 10.1(e)(v) are inaccurate or such Borrower has breached any covenant set forth in Section 11.2(m) or 11.2(n). Any such Obligations shall be full recourse Obligations of the applicable Borrower.
- Revised Section 20.0 to provide that a Borrower's pledge of Collateral, request for any Loan or incurrence of any other Obligation on or after the effective date of the amendment constitutes the Borrower's deemed agreement to the changes in Sections 5.5 and 17.0 for Loans advanced before the effective date.

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