



TERM ASSET-BACKED SECURITIES LOAN FACILITY BORROWER ELIGIBILITY AND FRBNY DUE DILIGENCE POLICY

I. Introduction

This Policy is designed to provide guidance for each Primary Dealer that intends to make a loan request on behalf of a potential Borrower to the Federal Reserve Bank of New York's (the "FRBNY") Term Asset-backed Securities Loan Facility ("TALF"). Under the TALF, the FRBNY relies in substantial part on the due diligence and customer identification programs of each Primary Dealer and has high expectations that each Primary Dealer will guard the reputation of its firm and maintain the public confidence in the Federal Reserve in the discharge of its responsibilities with respect to the TALF.

This Policy is neither intended to alter existing legal obligations or supervisory expectations placed on the Primary Dealers, nor designed to prescribe acceptable policies, procedures or practices. Rather, this Policy is intended solely to elaborate on provisions outlined in the TALF's Master Loan and Security Agreement, and provide a framework for information regarding TALF potential Borrowers to flow to the FRBNY.

Terms not defined in this Policy have the meanings given to them in the TALF's Master Loan and Security Agreement.¹

II. Borrower Eligibility

A. General Obligation

Each Primary Dealer will exercise reasonable care to ensure that each customer who requests a TALF loan is an Eligible Borrower and will obtain information sufficient to make such determination.

B. Suitability of Investment

Each Primary Dealer will make a determination based on its existing policies and guidelines as to whether participation in the TALF by a potential Borrower is a suitable endeavor for such potential Borrower.

¹ The Master Loan and Security Agreement may be accessed at the following address:
http://www.newyorkfed.org/markets/TALF_MLSA.pdf.

III. Description of Know Your Customer Program

Each Primary Dealer will provide the FRBNY Compliance Function with information about the Primary Dealer's KYC Program sufficient to describe the Primary Dealer's process and criteria for determining whether a potential Borrower will be identified as a Specified customer.² Primary Dealers also will be responsible for communicating to FRBNY Compliance any material changes made to their KYC Program while the Primary Dealer is a TALF participant.

IV. Escalation to FRBNY of Information Relating to Specified Potential Borrowers

A. Who is a Specified Borrower?

"Specified" when referring to any Person, including a Borrower, customer, or Material Investor, refers to the following Persons: 1) customers of a Primary Dealer who are or were subject to the Primary Dealer's enhanced due diligence procedures, whether required by law or otherwise; 2) customers of a Primary Dealer who are specially monitored by such Primary Dealer due to activity that has warranted reporting or enhanced scrutiny; 3) customers against whom the Primary Dealer has otherwise taken action under its anti-money laundering program, such as restricting such customer's account activity or closing one or more of the customer's accounts; or 4) any Person whom the Primary Dealer determines, in its discretion, to bring to FRBNY's attention for the purposes of this Policy.

B. General Standard

Each Primary Dealer will subject each potential Borrower to the Primary Dealer's Know Your Customer Program and comply with the requirements of the Office of Foreign Assets Control. On or before the Loan Subscription Date, each Primary Dealer shall communicate to FRBNY Compliance information relating to any potential Borrowers identified as Specified potential Borrowers pursuant to the Primary Dealer's KYC Program. Information provided to FRBNY Compliance must include: 1) information sufficient for FRBNY Compliance to form a reasonable belief that it knows the potential Borrower's true identity; and 2) the reason or reasons the Primary Dealer identified the potential Borrower as a Specified potential Borrower, and, if any, explanatory information that may mitigate such designation. FRBNY expects decisions regarding whether or not a potential Borrower is deemed a Specified Borrower to be based on reasonably current information, and that enhanced due diligence will be performed, as appropriate. Communications made pursuant to this Section should be made to FRBNY via secured email to talf.compliance@ny.frb.org.³

Nothing in this Section limits a Primary Dealer's option to refuse any Person as a customer or potential Borrower based on any aspect of the Primary Dealer's KYC Program or for any other business reason.

² "Know Your Customer Program" or "KYC Program" means a Primary Dealer's customer identification program and customer due diligence policies and procedures.

³ In order to send and receive secure email to and from the FRBNY each Primary Dealer must have an FRSecure account.

C. Investment Funds Established by the Primary Dealers

FRBNY expects that each Primary Dealer will apply its Know Your Customer Program to investors in Investment Funds established by such Primary Dealer. If an Investment Fund established by a Primary Dealer intends to borrow from the TALF, each such Primary Dealer is expected to escalate to FRBNY information pertaining to any Material Investors in the fund, if those persons are deemed Specified customers, along with other relevant information regarding such Investment Fund.⁴

If a Primary Dealer is informed that a potential Borrower has not been authorized to participate in the TALF pursuant to Section V. of this Policy, such potential Borrower will not be permitted to gain access to the TALF through any Investment Fund established by such Primary Dealer.

D. Other Potential Borrowers

Each Primary Dealer is expected to “look through” a customer entity to the entity’s underlying stakeholders if the Primary Dealer deems it appropriate pursuant to its KYC Program or industry practices.⁵ If a Primary Dealer “looks through” an entity, the Primary Dealer must escalate to FRBNY Compliance information relating to the entity and information relating to the entity’s Principals.⁶

Moreover, Primary Dealers are expected to identify the Principals of potential Borrowers if: 1) the potential Borrower is a newly formed entity that is Controlled by or was established by or for a Person who, but for the establishment of such potential Borrower, would not be eligible to access TALF loans; or 2) the potential Borrower is a Captive Investment Fund or a Semi-captive Investment Fund.⁷ If after identifying a Borrower’s Principals, a Primary Dealer determines that the entity is a Specified potential Borrower, or any of the entity’s Principals would warrant the scrutiny applied to a Specified customer pursuant to the Primary Dealer’s KYC Program, the Primary Dealer must escalate to FRBNY information relating to the potential Borrower and its Principals.

V. Determinations Made by FRBNY Compliance

FRBNY Compliance will determine whether potential Borrowers identified as Specified potential Borrowers will be permitted to participate in the TALF. If FRBNY Compliance determines that a potential Borrower will not be permitted to participate in the TALF, FRBNY

⁴ A “Material Investor” is a Person who owns, directly or indirectly, an interest in any class of securities of a Potential Borrower that is greater than or equal to a 10% interest in such outstanding class of securities.

⁵ For an example of industry practices, see Wolfsberg Frequently Asked Questions (“FAQs”) on Selected Anti-Money Laundering Issues in the Context of Investment and Commercial Banking, <http://www.wolfsberg-principles.com/faq-ibcb.html> (last visited Feb. 19, 2009)

⁶ “Principals” includes the sponsor of a potential Borrower, Material Investors in a potential Borrower, and any Person with Control over a potential Borrower.

⁷ A “Captive Investment Fund” is a fund established for the benefit of one person. A “Semi-captive Investment Fund” is an Investment Fund in which there is at least one Material Investor.

Compliance will inform the Primary Dealer of such determination, which will be made in no fewer than two (2) full business days from receipt of information designated in Section IV.

Each Primary Dealer will provide FRBNY with the name and contact information of an individual who will serve as a point of contact for any issues that arise with respect to a Specified potential Borrower. Should FRBNY Compliance require additional information with respect to a potential Borrower, FRBNY Compliance will contact such point of contact.

VI. Annual Certification

Each Primary Dealer will certify to the FRBNY annually that: 1) it is a financial institution subject to regulation by a Federal functional regulator; 2) it has implemented an anti-money laundering program pursuant to requirements issued by such regulator pursuant to 31 U.S.C. §5318(h); 3) the Primary Dealer (or its agent) will perform all aspects of its customer identification program with respect to each potential Borrower, which customer identification program is subject to examination by a Federal functional regulator; and 4) it is aware that any TALF loans made by FRBNY are made in reliance on the representations and warranties made by the Primary Dealer in Section 10.2(d) of the Master Loan and Security Agreement.⁸

VII. Maintenance of Records, Reporting, Inspection and Confidentiality

A. Maintenance of Records

Potential Borrowers are required to enter into an agreement with the Primary Dealer to provide all information required or reasonably requested by the Primary Dealer in connection with Primary Dealer's KYC and anti-money laundering compliance programs, and authorize the Primary Dealer to provide such information to FRBNY upon request. Each Primary Dealer will maintain files of such information regarding each Borrower, and its respective Principals, in a manner that may be reviewed periodically by FRBNY Compliance for quality assurance purposes. Such files will be maintained by the Primary Dealer for at least five (5) years after: 1) a TALF Borrower's loan is repaid; or 2) a TALF Borrower transfers its interest in the securities purchased with the TALF loan, or forfeits its rights to such securities. Nothing in this Section exempts a Primary Dealer from any additional record-keeping requirements contained in SEC Rule 17a-4 or Part 103 of Title 31 of the Code of Federal Regulations, or any other law or regulation.

⁸ The following representations and warranties are made by the Primary Dealer in Section 10.2(d): 1) the Primary Dealer is subject to a rule implementing 31 U.S.C. § 5318(h) and maintains an anti-money laundering program compliant with the requirements of the USA PATRIOT Act and the rules thereunder; 2) the Primary Dealer is regulated by a Federal functional regulator; 3) the Primary Dealer has implemented a customer identification program compliant with Section 326 of the Act that enables such Primary Dealer to form a reasonable belief that it knows the true identity of its customers, including Potential Borrowers, which includes procedures to obtain information from and verify the identity of customers, maintain records of the information used to verify identity, determine whether any customer appears on any government list of known or suspected terrorists or terrorist organizations, and provide customers with adequate notice that the institution is requesting information to verify their identities; 4) the Primary Dealer has implemented risk-based due diligence procedures designed to identify high risk customers; and 5) the Primary Dealer is in compliance with its anti-money laundering program and its customer identification program in all material respects.

B. Reporting and Inspection

Each Primary Dealer will: 1) provide FRBNY with any reports or statements that FRBNY reasonably requests with respect to any Borrower; and 2) permit FRBNY and any agents or representatives designated by the FRBNY, including representatives of the Board of Governors of the Federal Reserve System (the “Board”), to visit, audit and inspect the records maintained by such Primary Dealer with respect to any Borrower during normal business hours from time to time as requested and to make extracts from and copies of such records.

C. Confidentiality

FRBNY will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents to hold, in confidence all non-public information concerning any loan to any Borrower furnished or made available to it by such Borrower or the Primary Dealer acting on its behalf, or their respective agents or representatives pursuant to the lending agreement except to the extent necessary or desirable for FRBNY to enforce any of its legal rights or remedies under the lending agreement; provided that nothing will prevent FRBNY from disclosing any information described in this Subsection: 1) to the Board or to the United States Department of the Treasury or any of their respective oversight bodies upon any of their request or demand; or 2) to the extent required by applicable laws or regulations or by any subpoena or similar legal process.